

CRIMINAL NUMBER 1:02-CR-00157

CIVIL NUMBER _____

IN THE
UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

STEVEN M. RENNICK, SR.

Defendant-Movant

VS

UNITED STATES OF AMERICA

Plaintiff-Respondent

MOTION TO VACATE, SET ASIDE
OR CORRECT A SENTENCE
BY A PERSON IN FEDERAL CUSTODY
PURSUANT TO 28 USC § 2255

APPENDIX

VOLUME TWO

SUBMITTED BY MOVANT

Steven M. Rennick, Sr.
Movant Pro Se
Reg. No.: 04050-032
Federal Medical Center
P.O. Box 14500
Lexington, Kentucky 40512-4500

APPENDIX FOR MOTION PURSUANT TO 28 USC § 2255

RENNICK vs. USA No.: CR 1-02-157

VOLUME TWO

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

STEVEN RENNICK, SR.

Movant/Defendant

VS

UNITED STATES OF AMERICA

Respondent

Case No.: CR-1-02-00157

Hon. Judge Susan J. Dlott

U.S. District Court Judge

MOTION TO REINSTATE RIGHT TO DIRECT APPEAL

PURSUANT TO RULE 4(b) FEDERAL RULES APPELLATE PROCEDURE

Comes the defendant, Steven Rennick, Sr., pro se, and moves this court for an order reinstating defendant's right to direct appeal beyond the statutory time period and in support defendant states as follows:

As a preliminary matter, the defendant avers that he is not an attorney; has no legal or professional training pertaining to the preparation and filing of legal motions or memorandums. The defendant seeks notice of such limitations and prays this court to construe his pleadings liberally in light of the Supreme Court holding in Haines v Kerner, 404 U.S. 519, 30 L.Ed.2d 652 (1972); Cruz v Beto, 405 U.S. 319, (1972); Lawler v Marshall, 898 F.2d 1196 (6th Cir 1990); Hill v U.S., 268 U.S. 424, 430 (1984). The

allegations and averments in a pro se pleading must be taken as true and construed in favor of the defendant. See Malone v Colyer, 710 F.2d 258, 260 (6th Cir 1983).

CASE HISTORY

On October 16, 2002, defendant was arrested on multiple counts charging various violations of 21 USC §§ 846 and 841(a)(1) and (b)(1)(B) all dealing with possession with intent to distribute marijuana. On August 19, 2003, defendant entered a plea pursuant to a written plea agreement to Count One with conspiracy to distribute in excess of 100 kilograms of marijuana in violation of 21 USC §§ 846 and 841(a)(1A) and (b)(1)(B).

On January 28, 2004, the defendant was sentenced by this court to a sentence of 63 months in the custody of the Bureau of Prisons.

DEFENDANT'S RIGHT TO DIRECT APPEAL WAS FORECLOSED BY THE DISTRICT COURT CLERK'S FAILURE TO FILE NOTICE OF APPEAL

Defendant was represented at plea and sentencing by private counsel, William R. Gallagher.

At sentencing the court formally imposed the sentence and then informed the defendant of his rights to appeal his sentence and conviction. The court concluded the notice of appellate rights by stating:

"If you request, Mr. Rennick, I'll order the Clerk of the Court to file your notice of appeal immediately after the judgement is filed, and, if not, Mr. Gallagher, will you protect the rights of the defendant?"
[Exhibit One - Sentencing Transcript pg 20 ln 1-4].

Defendant's counsel responded that he had already discussed with the defendant the potential outcomes of the sentencing hearing and that defendant would like to appeal. After giving the court the verbal notice of intent to appeal the following exchange took place:

"THE COURT: And are you going to be responsible for filing it, or do you want the Clerk?
GALLAGHER: Judge, if the clerk would. I don't know what the financial situation is going to be from this point forward ... But either new counsel is either going to be appointed or retained to pursue it.
THE COURT: All right. That's fine." [ID ln 8-15].

Clearly defendant's counsel made clear the defendant wanted to appeal; that the clerk was to file the notice of appeal; and defendant's counsel would not be handling the appeal.

A review of the docket indicates no notice of appeal was ever filed. This fact was only recently discovered by the defendant.

Immediately after the sentencing the defendant observed the sentencing of his co-defendant who was represented by attorney Kenneth L. Lawson II. Attorney Lawson actual addressed the court regarding defendant's attempted cooperation and successfully obtained a reduction under USSC § 5K1.1 for his client on the basis of a proposition that his client persuaded the defendant to try and cooperate. The defendant was so impressed that he hired attorney Lawson to handle his appeal. Attorney Lawson filed

appearance on 1/29/04 [Docket #148].

In the weeks and months following the sentencing, the defendant was preoccupied with serious medical problems and recovering from gunshot wounds he sustained while attempting to provide substantial assistance to the government. (The defendant only recently obtained evidence and a statement from an eyewitness identifying Detective John Mercado as one of the two men responsible for shooting him).

The defendant remained on bond pending self-surrender based in part on his medical and mental health problems. On 1/29/2004 defendant, through counsel, filed a Motion for Reconsideration [Docket #149] and on 2/10/2004 defendant filed a Motion to Withdraw Plea of Guilty [Docket #162]. During all this time the defendant was under the impression an appeal was being aggressively pursued.

The defendant self-surrendered to the Federal Medical Center in Lexington, KY, on 5/28/2004. The defendant was told by his counsel that he was very busy and was also ill and would not file anything until September.

As the time grew near, the defendant began to grow impatient and his family made inquiry as to the status of the appeal and the possibility of a bond pending appeal. Attorney Lawson advised that there would be no appeal as no notice was ever filed. He advised he would file a 500+ page motion pursuant to 28 USC § 2255 to challenge the plea and sentence. He said it would take more time

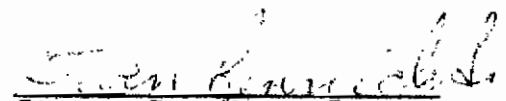
as he was suffering from A.L.S., more commonly known as Lou Gehrig's Disease, a fatal motor neuron disease.

The defendant then sought to get new counsel to try to appeal his case. He retained John Paul Rion of Dayton, Ohio, who after review said an appeal was now time barred and a § 2255 motion would be the last resort. Counsel made this decision without benefit of review of the sentencing transcript.

On December 8, 2004, the defendant received, for the first time, a transcript of his sentencing hearing, which was just recently transcribed. The transcript, as indicated above, clearly establishes this court knew of defendant's desire to appeal and this court agreed to have the Clerk file the required notice, which was not filed as instructed.

The failure to file notice of appeal is not attributable to the defendant. The defendant prays this court to grant defendant's motion and allow him to take Direct Appeal of his sentence and conviction as there are genuine issues to appeal.

Respectfully submitted,

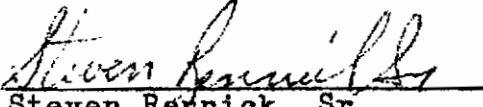

Steven Rennick, Sr.
#04050-032 HCU
Federal Medical Center
P.O. Box 14500
Lexington, KY 40512

CERTIFICATE OF SERVICE

I, Steven Rennick, attest the foregoing was deposited, postage pre-paid, into the prison legal mail box, addressed as set forth below, on this _____, day of December 2004.

Clerk of the Court
U.S. District Court
Southern District of Ohio
U.S. Courthouse
100 East Fifth Street
Cincinnati, OH 45202

Robert C. Brickler, AUSA
221 E. Fourth Street
Suite 400
Cincinnati, OH 45202


Steven Rennick, Sr.
#04050-032
Fmc —
—
—

1 If you request, Mr. Rennick, I'll order the clerk
2 of courts to file your notice of appeal immediately after
3 the judgment is filed, and, if not, Mr. Gallagher, will you
4 protect the rights of the defendant?

5 MR. GALLAGHER: Judge, I will. I have already
6 spoken to Mr. Rennick about the potential outcomes of the
7 sentencing hearing. He would like to appeal.

8 THE COURT: And are you going to be responsible
9 for filing it, or do you want the clerk?

10 MR. GALLAGHER: Judge, if the clerk would. I
11 don't know what the financial situation is going to be from
12 this point forward because of forfeiture proceedings that
13 are engaged in state court. But either new counsel is
14 either going to be appointed or retained to pursue it.

15 THE COURT: All right. That's fine.

16 Mr. Brichler, what's the custodial status of the
17 defendant?

18 MR. BRICHLER: Your Honor, Mr. Rennick is free on
19 bond that was posted when this case was initially brought.
20 I spoke with Pretrial Services, and he's complied with all
21 the requested Pretrial Services, and we would request the
22 Court consider allowing Mr. Rennick to self report.

23 THE COURT: All right. Who have we got from the
24 marshals here? Did I see Joel somewhere?

25 Nobody here from the marshals. Okay. I'm not

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

Steven Rennick, Sr.,	:	
	:	Case No. CR-1-02-157
Petitioner	:	
	:	District Judge Susan J. Dlott
v.	:	
	:	
United States of America,	:	ORDER
	:	
Respondent	:	

This matter is before the Court on Petitioner's Motion to Reinstate Right to Direct Appeal Pursuant to Rule 4(b) Federal Rules Appellate Procedure (doc. #191). Petitioner Steven Rennick, Sr. asserts that a notice of appeal was not filed on his behalf within the statutory time period due to the neglect of his legal counsel and/or oversight of the clerk of courts. For the reasons that follow, the Court **DENIES** Petitioner's motion, but will permit Petitioner to file a motion to vacate, set aside or correct his sentence pursuant to 28 U.S.C. § 2255 within 90 days of the date of this Order.

I. BACKGROUND

On August 19, 2003, Petitioner pleaded guilty to conspiracy to distribute in excess of 100 kilograms of marijuana. (Doc. #103.) On January 28, 2004, this Court sentenced Petitioner to a term of imprisonment of 63 months followed by four years of supervised release. (Doc. #188 at 14, 16.) Petitioner was represented by William R. Gallagher, Esq. at his sentencing hearing. The following conversation took place between the Court and Mr. Gallagher at the hearing concerning Petitioner's right to appeal his sentence:

THE COURT: Let me tell you about your rights on appeal. Both parties are notified by the Court that you have a right to appeal this sentence. . . . You

are further advised that, in accordance with Rule 4(b) of the Rules of Appellate Procedure, you must file your notice of appeal with the clerk of the United States District Court, within ten days of the filing of the judgment. The Court does advise you that, if you request, the clerk of the Court will prepare and file immediately the notice of appeal on your behalf. . . . If you request, Mr. Rennick, I'll order the clerk of courts to file your notice of appeal immediately after the judgment is filed, and, if not, Mr. Gallagher, will you protect the rights of the defendant?

MR. GALLAGHER: Judge, I will. I have already spoken to Mr. Rennick about the potential outcomes of the sentencing hearing. He would like to appeal.

THE COURT: And are you going to be responsible for filing it, or do you want the clerk?

MR. GALLAGHER: Judge, if the clerk would. I don't know what the financial situation is going to be from this point forward because of the forfeiture proceedings that are engaged in the state court. But either new counsel is going to be appointed or retained to pursue it.

THE COURT: All right. That's fine.

(Doc. #188 at 19-20.) The clerk of courts, however, did not file the notice of appeal on Petitioner's behalf. The statutory deadline for filing a notice of appeal passed on or about February 9, 2004. See Fed. R. App. P. 4(b).

Petitioner retained Kenneth L. Lawson, II, Esq. to represent him after the sentencing hearing on January 29, 2004. (Doc. #148.) Mr. Lawson filed multiple motions on Petitioner's behalf, including motions for reconsideration, to withdraw the plea of guilty, and to stay execution of his sentence (docs. ##149, 162, 166), but he did not file a notice of appeal. Petitioner asserts in his *pro se* brief that he believed that an appeal was being pursued during this time. Petitioner states that he first learned in September 2004 that an appeal had not been filed. Thereafter, Petitioner was told by both Mr. Lawson, and then by John Hayes Rion, Esq., a new attorney he retained, that his appeal rights had passed and that he would have to pursue relief by

filing a motion to vacate, set aside, or correct his sentence under 28 U.S.C. § 2255.

The transcript from Petitioner's sentencing hearing was docketed on December 3, 2004. (Doc. #188.) After reviewing the sentencing transcript for the first time, Petitioner filed this *pro se* motion on December 14, 2004 seeking reinstatement of his appeal rights.

II. ANALYSIS

The Court is required by the Federal Rules of Criminal Procedure to advise a defendant who has pleaded guilty of his rights (1) to appeal his sentence, (2) to ask for permission to appeal *in forma pauperis*, and (3) "[i]f the defendant so requests, [to have the clerk] immediately prepare and file a notice of appeal on the defendant's behalf." Fed. R. Crim. P. 32(j). The Supreme Court has instructed that "[t]rial judges must be meticulous and precise in following each of the requirements of Rule 32 in every case." Peguro v. United States, 526 U.S. 23, 27 (1999). A violation of Rule 32 is grounds for collateral relief if the defendant is prejudiced by the court's error. See id. at 27-30.

The Court has found only one other case in which a petitioner alleges that the district court clerk failed to file a notice of appeal upon request in violation of Rule 32(j)(2). See United States v. Hirsch, 207 F.3d 928 (7th Cir. 2000). As the Hirsch court explained, a district court does not have the authority under the Federal Rules of Criminal Procedure or Rule 4(b) of the Federal Rules of Appellate Procedure to extend the time period by which a notice of appeal may be filed by more than 30 days. See id. at 930 (explaining Fed. R. App. P. 4(b)(4)). Rather, an allegedly aggrieved petitioner, like Petitioner Rennick here, must pursue relief for the clerk's error by filing a motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255. See id. at 931. If Petitioner can establish that his constitutional rights were violated, then this

Court must vacate the judgment against Petitioner and reimpose his sentence so that Petitioner can file a timely appeal. See id. at 931.¹

Accordingly, the Court will permit Petitioner to file a motion pursuant to 28 U.S.C. § 2255 within 90 days of the date of this Order. Petitioner should address specifically in his motion whether the motion has been timely filed, and if not, on what grounds the limitations period should be equitably tolled.² Petitioner also should address specifically all grounds for relief from the conviction or sentence he seeks to challenge.

Attached hereto as Exhibit A is a standard form for a motion under 28 U.S.C. § 2255. The Court directs Petitioner's attention to paragraph 6 of the instructions listed on the first page of the standard form wherein he is instructed as to how to request to proceed *in forma pauperis*

¹ Courts have afforded this same relief to petitioners pursuant to § 2255 motions when their defense counsel failed to file a timely appeal despite specific instructions to do so by the petitioners. See e.g., Rosinski v. United States, 459 F.2d 59, 59 (6th Cir. 1972) (vacating, then reinstating, petitioner's sentence so that he could file a timely appeal); United States v. Forsythe, 985 F. Supp. 1047, 1051 (D. Kan. 1997) (same).

² The one-year limitation period for § 2255 is not jurisdictional and it is subject to equitable tolling. See Dunlap v. United States, 250 F.3d 1001, 1004 (6th Cir. 2001). Courts examine the following five factors to decide whether to apply equitable tolling:

(1) the petitioner's lack of notice of the filing requirement; (2) the petitioner's lack of constructive knowledge of the filing requirement; (3) diligence in pursuing one's rights; (4) absence of prejudice to the respondent; and (5) the petitioner's reasonableness in remaining ignorant of the legal requirement for filing his claim.

Id. at 1008-09. Generally, reliance on an attorney or on an attorney's mistaken advice is not grounds for equitable tolling. See Allen v. Yukins, 366 F.3d 396, 403-04 (6th Cir. 2004) cert. denied 125 S.Ct. 200 (2004); Jurado v. Burt, 337 F.3d 638, 643 (6th Cir. 2003). However, one district court equitably tolled the filing period when a petitioner's attorney did not inform him that his state appeal had been decided until after the deadline for filing his habeas petition. See Erwin v. Elo, 130 F. Supp. 2d 887-90 (E.D. Mich. 2001). The petitioner in Erwin learned his state appeal had been decided only after he inquired to the state court about the status of his appeal. See id.

(as a poor person) so that an attorney may be appointed to him. Upon filing of Petitioner's § 2255 motion, the United States will be served with notice to answer or otherwise plead pursuant to Rules 4(b) and 5 of the Rules Governing Section 2255 Proceedings.

III. CONCLUSION

For the foregoing reasons, Petitioner's motion for relief pursuant to Appellate Rule 4(b) (doc. #191) is **DENIED**. Petitioner is permitted to file a motion pursuant to 28 U.S.C. § 2255 as set forth above within 90 days of the date of this **ORDER**. Nothing herein shall be construed as a finding as to the timeliness or merits of a § 2255 motion.

IT IS SO ORDERED.

s/Susan J. Dlott
Susan J. Dlott
United States District Judge

UNITED STATES DISTRICT COURT		District Southern District of Ohio - Cincinnati
Name of Movant STEVE RENNICK, SR.	Prisoner No. 04050-032	Case No. 1:02-CR-00157
Place of Confinement Federal Medical Center, P.O. Box 14500, Lexington, KY 40512-4500		

UNITED STATES OF AMERICA

V. **STEVE RENNICK SR.**

(name under which convicted)

MOTION

- Name and location of court which entered the judgment of conviction under attack United States District Court, Southern District of Ohio, Western Division Cincinnati
- Date of judgment of conviction JANUARY 28, 2004
- Length of sentence 63 months
- Nature of offense involved (all counts) Count ONE: Conspiracy to distribute in excess of 100 kilograms of marijuana in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(B) and § 846. All remaining counts dismissed
- What was your plea? (Check one)
 - (a) Not guilty ☐
 - (b) Guilty ☒
 - (c) Nolo contendere ☐

If you entered a guilty plea to one count or indictment, and not a guilty plea to another count or indictment, give details:
Pled to Count ONE by virtue of Plea Agreement UNDER which REMAINING counts were dismissed.
- If you pleaded not guilty, what kind of trial did you have? (Check one)
 - (a) Jury ☐
 - (b) Judge only ☐ N/A
- Did you testify at the trial?
 - Yes ☐
 - No ☒
- Did you appeal from the judgment of conviction?
 - Yes ☐
 - No ☒ CLERK failed to file timely notice AS ORDERED

FILED

JAN 26 2005

JAMES BONINI, Clerk
CINCINNATI, OHIO

9. If you did appeal, answer the following:

- (a) Name of court N/A
- (b) Result _____
- (c) Date of result _____

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, application motions with respect to this judgment in any federal court?

Yes ☐ No ☒

11. If your answer to 10 was "yes," give the following information: N/A

(a) (1) Name of court _____

(2) Nature of proceeding _____

(3) Grounds raised _____

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☐

(5) Result _____

(6) Date of result _____

(b) As to any second petition, application or motion give the same information:

(1) Name of court _____

(2) Nature of proceeding _____

(3) Grounds raised _____

1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100. 101. 102. 103. 104. 105. 106. 107. 108. 109. 110. 111. 112. 113. 114. 115. 116. 117. 118. 119. 120. 121. 122. 123. 124. 125. 126. 127. 128. 129. 130. 131. 132. 133. 134. 135. 136. 137. 138. 139. 140. 141. 142. 143. 144. 145. 146. 147. 148. 149. 150. 151. 152. 153. 154. 155. 156. 157. 158. 159. 160. 161. 162. 163. 164. 165. 166. 167. 168. 169. 170. 171. 172. 173. 174. 175. 176. 177. 178. 179. 180. 181. 182. 183. 184. 185. 186. 187. 188. 189. 190. 191. 192. 193. 194. 195. 196. 197. 198. 199. 200. 201. 202. 203. 204. 205. 206. 207. 208. 209. 210. 211. 212. 213. 214. 215. 216. 217. 218. 219. 220. 221. 222. 223. 224. 225. 226. 227. 228. 229. 230. 231. 232. 233. 234. 235. 236. 237. 238. 239. 240. 241. 242. 243. 244. 245. 246. 247. 248. 249. 250. 251. 252. 253. 254. 255. 256. 257. 258. 259. 260. 261. 262. 263. 264. 265. 266. 267. 268. 269. 270. 271. 272. 273. 274. 275. 276. 277. 278. 279. 280. 281. 282. 283. 284. 285. 286. 287. 288. 289. 290. 291. 292. 293. 294. 295. 296. 297. 298. 299. 300. 301. 302. 303. 304. 305. 306. 307. 308. 309. 310. 311. 312. 313. 314. 315. 316. 317. 318. 319. 320. 321. 322. 323. 324. 325. 326. 327. 328. 329. 330. 331. 332. 333. 334. 335. 336. 337. 338. 339. 340. 341. 342. 343. 344. 345. 346. 347. 348. 349. 350. 351. 352. 353. 354. 355. 356. 357. 358. 359. 360. 361. 362. 363. 364. 365. 366. 367. 368. 369. 370. 371. 372. 373. 374. 375. 376. 377. 378. 379. 380. 381. 382. 383. 384. 385. 386. 387. 388. 389. 390. 391. 392. 393. 394. 395. 396. 397. 398. 399. 400. 401. 402. 403. 404. 405. 406. 407. 408. 409. 410. 411. 412. 413. 414. 415. 416. 417. 418. 419. 420. 421. 422. 423. 424. 425. 426. 427. 428. 429. 430. 431. 432. 433. 434. 435. 436. 437. 438. 439. 440. 441. 442. 443. 444. 445. 446. 447. 448. 449. 450. 451. 452. 453. 454. 455. 456. 457. 458. 459. 460. 461. 462. 463. 464. 465. 466. 467. 468. 469. 470. 471. 472. 473. 474. 475. 476. 477. 478. 479. 480. 481. 482. 483. 484. 485. 486. 487. 488. 489. 490. 491. 492. 493. 494. 495. 496. 497. 498. 499. 500. 501. 502. 503. 504. 505. 506. 507. 508. 509. 510. 511. 512. 513. 514. 515. 516. 517. 518. 519. 520. 521. 522. 523. 524. 525. 526. 527. 528. 529. 530. 531. 532. 533. 534. 535. 536. 537. 538. 539. 540. 541. 542. 543. 544. 545. 546. 547. 548. 549. 550. 551. 552. 553. 554. 555. 556. 557. 558. 559. 560. 561. 562. 563. 564. 565. 566. 567. 568. 569. 570. 571. 572. 573. 574. 575. 576. 577. 578. 579. 580. 581. 582. 583. 584. 585. 586. 587. 588. 589. 590. 591. 592. 593. 594. 595. 596. 597. 598. 599. 600. 601. 602. 603. 604. 605. 606. 607. 608. 609. 610. 611. 612. 613. 614. 615. 616. 617. 618. 619. 620. 621. 622. 623. 624. 625. 626. 627. 628. 629. 630. 631. 632. 633. 634. 635. 636. 637. 638. 639. 640. 641. 642. 643. 644. 645. 646. 647. 648. 649. 650. 651. 652. 653. 654. 655. 656. 657. 658. 659. 660. 661. 662. 663. 664. 665. 666. 667. 668. 669. 670. 671. 672. 673. 674. 675. 676. 677. 678. 679. 680. 681. 682. 683. 684. 685. 686. 687. 688. 689. 690. 691. 692. 693. 694. 695. 696. 697. 698. 699. 700. 701. 702. 703. 704. 705. 706. 707. 708. 709. 710. 711. 712. 713. 714. 715. 716. 717. 718. 719. 720. 721. 722. 723. 724. 725. 726. 727. 728. 729. 730. 731. 732. 733. 734. 735. 736. 737. 738. 739. 740. 741. 742. 743. 744. 745. 746. 747. 748. 749. 750. 751. 752. 753. 754. 755. 756. 757. 758. 759. 760. 761. 762. 763. 764. 765. 766. 767. 768. 769. 770. 771. 772. 773. 774. 775. 776. 777. 778. 779. 780. 781. 782. 783. 784. 785. 786. 787. 788. 789. 790. 791. 792. 793. 794. 795. 796. 797. 798. 799. 800. 801. 802. 803. 804. 805. 806. 807. 808. 809. 810. 811. 812. 813. 814. 815. 816. 817. 818. 819. 820. 821. 822. 823. 824. 825. 826. 827. 828. 829. 830. 831. 832. 833. 834. 835. 836. 837. 838. 839. 840. 84

- (6) Date of result _____

(2) Second petition, etc. Yes ☐ No ☐

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There is no handwriting or other markings on the paper.

Caution: If you fail to set forth all grounds in this motion, you may be barred from presenting additional grounds at a later date.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The motion will be returned to you if you merely check (a) through (j) or any one of the grounds.

- [DE-194 P3 JA-180]

- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
 (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
 (e) Conviction obtained by a violation of the privilege against self-incrimination.
 (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
 (g) Conviction obtained by a violation of the protection against double jeopardy.
 (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
 (i) Denial of effective assistance of counsel.
 (h) Denial of right of appeal.

A. Ground one: Plea neither knowing or voluntary but acquired by
Prosecutorial misconduct, manipulation, + coercion.

Supporting FACTS (state briefly without citing cases or law)

SEE MEMORANDUM

B. Ground two: INEFFECTIVE ASSISTANCE OF COUNSEL

Supporting FACTS (state briefly without citing cases or law)

SEE MEMORANDUM

C. Ground three: GOVERNMENT BREACHED PLEA AGREEMENT

Supporting FACTS (state briefly without citing cases or law)

SEE MEMORANDUM

FD-240 (REV. 2/80)

- D. Ground four: DUE PROCESS by failing to grant downward departure, motion for reconsideration, motion to withdraw plea

Supporting FACTS (state briefly without citing cases or law) SEE memorandum

- E. Ground Five: Denied direct appeal by court clerk's failure to file notice of appeal.

SEE memorandum

13. If any of the grounds listed in 12A, B, C, and D were not previously presented, state briefly what grounds were not so presented and give your reasons for not presenting them:

These matters were to be raised on appeal but the court failed to file timely notice

14. Do you have any petition or appeal now pending in any court as to the judgment under attack?

Yes ☐

No ☒

15. Give the name and address, if known, of each attorney who represented you in the following stages of judgment attacked herein:

(a) At preliminary hearing William Gallagher, Esq. 114 East Eighth St, Cincinnati Ohio 45202

(b) At arraignment and plea SAME

(c) At trial SAME

(d) At sentencing SAME

NO 273 (REV. 2/05)

- (e) On appeal Kenneth L. Lawson, Esq., The Krueger Building, Suite 1575,
Cincinnati, Ohio 45202
- (f) In any post-conviction proceeding John Paul Rion, Rion, Rion Rion, LPA., c/o
P.O. Box 10126, Dayton, Ohio 45462
- (g) On appeal from any adverse ruling in a post-conviction proceeding _____

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and approximately the same time?

Yes ☐ No ☒

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes ☐ No ☒

(a) If so, give name and location of court which imposed sentence to be served in the future: _____

(b) Give date and length of the above sentence: _____

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes ☐ No ☐

Wherefore, movant prays that the Court grant petitioner relief to which he or she may be entitled in this proceeding.

Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

JAN. 20, 2005
(Date)

Steve M. Rionich Sr.
Signature of Movant

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION CINCINNATI

STEVE RENNICK, SR.

Movant/Defendant

vs

UNITED STATES OF AMERICA

Respondent

Case No.: 1:02-CR-00157

Hon. Susan J. Dlott

U.S. District Judge

MEMORANDUM IN SUPPORT OF
DEFENDANT'S MOTION TO VACATE, SET ASIDE OR AMEND
SENTENCE PURSUANT TO 28 USC § 2255

Comes the defendant, Steve Rennick, Sr., pro se, and moves this court for an Order Vacating and Setting Aside defendant's plea, conviction, and sentence to the extent that defendant's plea was coerced, not voluntary or knowing, and the express result of ineffective assistance of counsel and violative of defendant's 5th & 6th Amendment rights as set forth herein; and defendant further seeks to be tried on the merits of his case and assured the full force and effect of his constitutional rights and in support thereof the defendant states as follows:

As a preliminary matter, the defendant avers that he is not an attorney; has no legal or professional training pertaining to the preparation and filing of legal motions or memorandums. The

defendant seeks notice of such limitations and prays this court to construe his pleadings liberally in light of the Supreme Court holding in Haines v Kerner, 404 U.S. 519, 30 L.Ed.2d 652 (1972); Cruz v Beto, 405 U.S. 319, (1972); Lawler v Marshall, 898 F.2d 1196 (6th Cir. 1990); Hill v U.S., 268 U.S. 424, 430 (1984). The allegations and averments in a pro se pleading must be taken as true and construed in favor of the defendant. See Malone v Colyer, 710 F.2d 258, 260 (6th Cir. 1983).

The defendant further advises the court that there are several elements of style and format needing explanation:

1. The movant, Steve Rennick, Sr., is referred to throughout as the defendant.

2. There are two types of exhibit referrals. Items and documents contained in the record of the court are referred to by their "Docket Entry Number" and appear in text as [DE #]. Documents not part of the record are referred to as sequentially numbered exhibits and are referred to as [Ex #]. In addition, there are several composite exhibits referred to as [Comp Ex - # A.B.C..].

3. Docket Entry exhibits are not included in attachments as they are readily available to all parties. Other exhibits are submitted herewith. All exhibits are made a part hereof by reference.

STATEMENT OF THE CASE

Defendant was originally arrested on October 28, 2002, pursuant to a Complaint and Arrest Warrant [DE-1]. On November 6, 2002,

defendant was named, along with five other defendants in a five count indictment charging, inter alia; Count One: Conspiracy to distribute in excess of 100 kilograms of marijuana in violation of 21 USC §§ 841(a)(1) and (b)(1)(B) and § 846; Count Two: Distribution of approximately 50 pounds of marijuana in violation of 21 USC §§ 841 (A)(1) and (b)(1)(D) and 18 USC § 2; Count Four: Possession with intent to distribute 450 pounds of marijuana in violation of 21 USC §§ 841(a)(1) and (b)(1)(B) and 18 USC § 2. [DE - 8].

On March 5, 2003, defendant was named in an eight count superseding indictment charging essentially the same conduct, but adding a charge of engaging in monetary transactions in violation of 18 USC §§ 1957 & 2 [DE - 59].

Defendant's son, Steve Rennick, Jr., was named in the initial indictment, but was dismissed prior to the Superseding Indictment. The government, in its attempt to persuade defendant to plea, gave notice of its intent to force defendant's son to testify against the defendant. The court issued an order on August 15, 2003, compelling defendant's son to testify at the upcoming trial [DE - 102].

On August 19, 2003, defendant arrived at court for the commencement of his jury trial. On arrival defendant was first confronted by his counsel who advised him the government was claiming they had evidence where the defendant had paid several witnesses to give false testimony (Rule 404(b) evidence) [DE - 94]. The defendant knew this accusation to be false and continued to

adamantly desire a jury trial.

Defendant was then approached by co-defendant Matthew Elliot who asked if he could get the defendant to consider entering a guilty plea. Elliot made several arguments including, inter alia, (i) that if everyone pled it would be good for everyone; (ii) that all defendants had to plead in order for everyone to get a good deal; (iii) that if the defendant would not plead it could "mess up" Elliot's future and "ruin his life"; (iv) that the defendant would be able to "cooperate" with the government and would never do much time and might get probation.

Defendant's counsel, William Gallagher, echoed much of what Elliot said and encouraged defendant to plead guilty. Defendant was moved by Elliot's expressed desire that he enter a plea and was further confused and thereby moved by counsel's encouragement. The defendant agreed to entertain a discussion about a plea even though he knew he was innocent of any wrongdoing.

Defendant was ultimately manipulated into entering into a plea agreement to Count One [DE - 104]. Co-defendant Elliot entered into a similar agreement [DE - 106] and co-defendant Benjamin also entered into a similar agreement [DE - 111]. On the same day all three defendants entered their pleas pursuant to their plea agreements. [DE - 145].

On December 2, 2003, defendant caused an eight page letter to be transmitted to the judge and the government categorically denying any guilt in the matters charged. [Ex - 1].

On January 26, 2004, defendant's counsel filed a Motion for Downward Departure based on substantial assistance to the government and medical issues [DE - 147].

On January 28, 2004, defendant's sentencing was held. The defendant's motion for downward departure was denied. [DE - 188]. Defendant was sentenced on Count One to 63 months in prison; four years supervised release; a \$10,000.00 fine and a \$100.00 assessment. [DE - 188, 157]. Co-defendant Elliot was sentenced to 14 months in prison, followed by 2 years supervised release, a \$1,000.00 fine and a \$100.00 assessment [DE - 190]. Co-defendant Benjamin was sentenced to three years probation, a \$1,000.00 fine and a \$100.00 assessment. [DE - 189].

On January 29, 2004, defendant retained Kenneth L. Lawson, II, as new counsel [DE - 148]. On the same date counsel Lawson filed a Motion for Reconsideration [DE - 149].

On February 10, 2004, Counsel Lawson filed a Motion to Withdraw Plea of Guilty. [DE - 162]. On March 1, 2004, the court denied Motion to Reconsider and Motion to Withdraw Plea of Guilty. [DE - 168].

STATEMENT OF FACTS

The PreSentence Investigation Report (PSR) set forth the following facts in the Offense Conduct section of the report.

The investigation with respect to this case involved agents of the Regional Enforcement Narcotics Unit (RENU) and officers from area police departments.

On October 15, 2002, RENU agents, acting on a tip from a confidential informant, executed a search warrant at the residence of Eddie Moore in Norwood, Ohio. Agents recovered 30 pounds of marijuana and arrested Moore.

Moore claimed to be storing marijuana for Matthew Elliot, his close friend. Elliot paid Moore small amounts of marijuana for personal use. Agents learned that Kareem Cole and David Jones A/K/A Phillip Davidson obtained marijuana through a source in Arizona and brought it into Cincinnati for distribution. The marijuana was typically stored in a rented portion of a warehouse owned by Phyllis Rennick, the defendant's wife.

Defendant ran a garage on North Bend Road for 30 years. Approximately eight years ago the defendant leased a separate portion of the warehouse building to Dennis Morrison. After several years of being a model tenant, Morrison had no further need for the space and asked defendant if he would switch the lease to his uncle, Kareem Cole, and Cole's friend Phillip Davidson, A/K/A David Jones. The defendant agreed.

On October 16, 2002, surveillance was set up on the warehouse. Agents observed Steve Rennick, Jr., defendant's son, and Matthew Elliot arrive at the warehouse. Later the defendant also arrived. Shortly thereafter the defendant and Elliot left in one vehicle and Steve Rennick, Jr., left in another. Agents stopped and detained all three.

A search of the warehouse revealed 450 pounds of marijuana

inside a separate locked area of the rented warehouse. The defendant was found to have a key to the locked area.

The defendant's family owns the entire warehouse and real property. The warehouse is divided into separate leasable areas. The defendant's son operates the family trucking business in part of the building and the family rents the remaining space. The area in which the marijuana was found was in an areas leased under a lawful lease agreement to Kareem Cole. The defendant had keys to all areas of the building, as would any landlord.

According to the government's version of the crime, the defendant made three trips to Arizona to transport marijuana back to Cincinnati. The first two trips were allegedly made in a motor home and the third trip in a Freightliner Tractor. (Notably there is never any assertion about a trailer being used with the semi-tractor). The first trip allegedly involved 100 pounds, the second, 150 pounds and the third, 550 pounds for a total of 800 pounds.

On July 23, 2002, the defendant purchased a Freightliennr Semi-tractor in Arizona. The purchase price was \$93,000.00. The defendant paid \$5,000.00 by business Visa, the balance was paid by Provident Bank cashiers check for \$88,000.00 (\$46,000.00 was loan proceeds).

RENU agents were able to locate the residence of Cole and established surveillance. On October 16, 2002, Cole and Jones left the residence in a rented vehicle. Agents stopped the car

and detained both men. Cole's apartment and a vehicle were searched. Agents recovered scales, balance sheets showing money owed, marijuana and \$50,000.00 cash in the apartment. The vehicle contained a box that had 25 pounds of marijuana in it. It was also found that Cole had a key to the locked portion of the warehouse where the 450 pounds of marijuana was stored, and a key that fit the door lock at the warehouse.

From the period of June 24, 2002, through October 9, 2002, the defendant deposited \$74,000.00 into the Earth Management Account and \$80,000.00 into the S&S Racing account. All of these deposits were in cash. Both accounts were maintained at Provident Bank.

On December 2, 2003, defendant wrote an eight page letter to the judge denying any role in the offense whatsoever. Defendant also met with the probation department and supplied the following written statement:

"I, Steve Rennick, involved myself with Kareem Cole and another man whom I now know to be David Jones. I drove the trips to Arizona as alleged in the indictment. I regret my involvement in this case, the harm it has caused my family, and the embarrassment that has resulted to me. I entered my plea before trial in this case and believe my plea prompted the pleas of the two remaining co-defendants in this case. I believe my plea resulted in there being no trial in this case."
[DE - 107 pg 8].

This statement deliberately fails to mention anything about the possession or sale of marijuana. It also admits no criminal conduct. This was the only way the defendant would give a statement because he was not guilty.

SENTENCING FACTORS

Defendant was sentenced in accordance with the United States Sentencing Guidelines (USSG), November 1, 2002 edition. Defendant's base offense level for a violation of 21 USC §§ 846 and 841 (a)(1) and (b)(1)(B) is located at U.S.S.G. § 201.1. The sentence is based on the allegation that defendant's crime involved 800 pounds of marijuana or an equivalent of 362.88 kilograms. The appropriate range for the quantity is found at U.S.S.G. § 2D1.1(a)(3)(c)(7), the base offense level is 26. Defendant further received a three level reduction for acceptance of responsibility pursuant to §§ 3E1.1(a) and (b). This resulted in a Total Offense Level of 23.

Defendant had a total of three criminal history points and, therefore, is in Category II. The guideline sentencing range is 51 to 63 months. However, pursuant to U.S.S.G. § 5G1.1(c)(2) the range is 60-63 months. Defendant was sentenced to 63 months. [DE - 107, pp 20, 188, 157].

ISSUE I

DEFENDANT'S PLEA WAS NEITHER KNOWING
OR VOLUNTARY AS IT WAS ADDUCED
BY PROSECUTORIAL MISCONDUCT,
MANIPULATION AND COERCION.

A. DEFENDANT HAD NO DESIRE, MOTIVE OR NEED TO CONSIDER TAKING A PLEA.

The defendant never desired to enter a plea to the government's allegations and remained at all times adamant about going to trial, because the defendant was not and is not guilty of the crime charged.

The substance of the government's allegations were simple and circumstantial. Essentially the government alleged that RENU agents, acting on a tip from a confidential informant, found 30 pounds of marijuana at the residence of one Eddie Moore. Moore claimed to be storing marijuana for Matthew Elliot.

These facts led to a Kareem Cole and David Jones who, it was found were importing large quantities of marijuana from Arizona to Cincinnati and storing same in warehouse space leased from Phyllis Rennick, the defendant's wife. Agents found 450 pounds in this section of the warehouse.

The defendant had been hired by Cole to drive Cole and his associates from Cincinnati to Arizona and back on three occasions. The purpose of these trips was to assist in the promotion of three Reggae shows that Cole produced. The first two trips were made in a motor home and the third in a Freightliner semi-tractor (with no trailer).

The government also discovered the defendant had made \$154,000.00 in cash deposits to two business accounts. These facts comprised all of the government's basis in charging the defendant.

At the time of arrest, the defendant's son, Steve Rennick, Jr., was also arrested and similarly charged. Defendant initially

hired Attorney Richard Goldberg to represent his son and Attorney William Gallagher to represent himself. The defendant and his son were both freed on bond.

From the outset it was apparent that the government's case against the defendant was weak and purely circumstantial. The defendant was not found to possess any drugs or drug paraphernalia. The defendant was never observed in any drug transaction, nor was he a party to any recorded conversations, controlled buys, or any direct or physical evidence of any kind. There were only two circumstantial links to the crime. The defendant did have keys to all parts of the warehouse which his family owns and he had made three trips to Arizona with Cole and associates.

Defendant's defense team set out to assemble a substantial defense including, inter alia: (i) evidence that the last and largest 550 pound load was not transported in the Freightliner semi-tractor driven by the defendant, verified by a physical inspection of the tractor to determine that no trailer, of any kind, had ever been hooked to such tractor; (ii) a video taped deposition by a New Mexico Department of Transportation Officer indicating that he had been inside the new tractor on its return trip to Cincinnati and it did not contain nor could it have held the 550 pounds of marijuana alleged. (AUSA Brichler participated in this deposition); (iii) the warehouse space where the marijuana was found was leased by a valid lease agreement to Kareem Cole and David Jones, who both had keys to said space; (iv) independent

forensic accounting records indicated that the source of all cash deposits in the superseding indictment were documented and had nothing to do with the purchase or sale of any narcotics, nor were they from any illegal activity. There was significant evidence to overcome all aspects of the government's allegations and there was never a consideration of entering a plea to a crime the defendant did not commit.

B. DEFENDANT'S PLEA WAS ADDUCED BY PROSECUTORIAL MISCONDUCT

On the morning of August 19, 2003, the defendant's trial was set to commence. AUSA Robert Brichler met with co-defendant Matthew Elliot, his counsel Kenneth Lawson, and defendant's counsel William Gallagher. This meeting was unknown to the defendant. The purpose of the meeting was to devise a scheme to convince the defendant to enter a plea of guilty and avoid a trial.

It was determined that as part of this scheme, co-defendant Elliot would use his friendship and closeness to the defendant to persuade him to plead. Elliot was told to, and did, represent the following to the defendant: (i) that a plea was the best thing for all parties because each person would get a low sentence; (ii) that each defendant could cooperate and get little time or maybe probation; (iii) that defendants Elliot and Benjamin could get a "plea deal" only if all three defendants pled; (iv) that if they lost at trial it would ruin Elliot's and Benjamin's lives.

It was further a part of the plan that attorneys Gallagher and Lawson would show the defendant a notice that the government

had evidence in the form of witnesses who would confirm that the defendant had paid witnesses to lie. [DE - 94].

As consideration for his part in this scheme, co-defendant Elliot was promised a 5K1.1 downward departure of one third of his sentence for convincing the defendant to enter a guilty plea. This promise was made by AUSA Brichler.

In furtherance of this plan, defendant's counsel promised defendant would get no more than 36 months and probably probation. AUSA Brichler represented the defendant could cooperate and "work off" his sentence; the government further agreed to not seek forfeiture on a motor home owned by the defendant.

At the time of this pressuring of the defendant, Elliot, Gallagher, and Brichler all knew the defendant suffered from PTSD, Post Traumatic Stress Disorder, and was on numerous medications. Defendant's medical records indicate the defendant was diagnosed with "severe and persistent mental illness including schizophrenia, bipolar disorder, major affective disorder and severe PTSD." Records further indicate the defendant was taking Quetiapine Furo-mate, Sertraline HCL, Risperidone, Trazodone HCL, Lorazepam, and Oxycodone, all of which have mind altering effects. Medical records further indicate the defendant's mental illness by the time of sentencing had become; "severe functional impairment [was] such that the Veteran is neither currently capable of successful and stable self-maintenance in a community living situation nor able to participate in necessary treatments without intensive support."

Clearly the defendant was in no condition to enter a plea, let alone a manipulated and emotionally coerced plea. [Comp Ex - 2 A, B, & C].

The scheme was successful and defendant eventually gave in and agreed to a plea to a crime he did not commit. Defendant's counsel stressed that he would be required to answer the court's questions as instructed or the deal would fall through. The defendant had no knowledge that Elliot was rewarded for his part of the scheme.

The three plea agreements [DE - 104, 106, 111] are essentially the same. None provide any factual basis and Elliot's does not mention the 5K1.1 reduction for manipulating the defendant and emotionally coercing the defendant's plea.

At the plea hearing the government was finally asked to provide the factual basis for the plea. The government's basis included, inter alia, that the defendant conspired with co-defendants Cole, Jones, and Elliot to distribute marijuana; that defendant traveled to Arizona to bring back 500 pounds of marijuana in defendant's Freightliner tractor; that the defendant stored the drugs in his warehouse; that co-defendant Elliot received 50 pounds of said marijuana; that the defendant gave one pound of marijuana to co-defendant Benjamin.

Upon hearing these facts the defendant was stunned. He knew he was pleading to something he did not do, but now he was being asked to further admit details that simply never happened. When

the court inquired, "Mr. Rennick, we need something verbal," he was speechless and at the nudging of counsel said, "No, ma'am." There was simply no truth to the factual basis. [DE - 145].

As soon as the plea hearing was over the defendant gathered with attorneys Gallagher, Richard Goldberg, Lawson, and Cohen, the other co-defendants and several of defendant's friends and family. He was furious that he was forced to lie to the patently untrue factual basis. The lawyers attempted to calm him down by stating over and over that it was only a "fictional plea" and it would make no difference. The defendant has submitted an affidavit including the fact of the fictional plea. [Comp Ex - 3A, ^{para}pg 5].

In addition, defendant submits an affidavit from Demetrious A. Ball [Ex 38] who is a friend of the defendant and was present when these events occurred. He observed the defendant moving his head from side to side gesturing the factual basis was untrue, ID pg 2 para 7. He further observed other indications that the defendant was not in agreement with the factual basis, ID paras 8-11. Finally, he recounts the matters he heard relative to the "fictional pleas." ID paras 12 and 14.

The defendant submits an affidavit from co-defendant Wayne Benjamin, which directly supports the facts stated herein. [Comp Ex - 3C].

The entering into a deal with a co-defendant to manipulate an untruthful plea is an action in furtherance of deceiving the court and undermining the judicial system and it is, per se, gross

misconduct on the part of the prosecution. The actions of AUSA Brichler tainted the entire case and demand reversal.

An Appellate Court reviews a claim of prosecutorial misconduct for harmless error. "[T]he touchstone of due process analysis in cases of alleged prosecutorial misconduct is the fairness of the trial, not the culpability of the prosecutor." Marshall v Hendricks, 307 F.3d 36, 64 (3rd Cir. 2002). In this proceeding a defendant with known mental problems was subjected to emotional coercion by a younger co-defendant who enjoys a son-like closeness to the defendant for the purposes of extracting a false confession. This is misconduct of the type considered in Mason v Mitchell, 320 F.3d 604, 635 (6th Cir. 2003) "this misconduct must be so pronounced and persistent that it permeates the entire atmosphere of the [proceeding] or so gross as probably to prejudice the defendant."

As shall be seen, this case is one where bad faith and conduct begat more of the same. The coerced plea led to defective sentence, which set up a botched cooperation, and ultimately the defendant being shot and nearly killed by a rogue cop still on the loose.

Normally, a claim such as this would be reviewed de novo. United States v Wells, 211 F.3d 988, 995 (6th Cir. 2000). However, the defendant is only now raising the matter for the first time. The government may well argue that by not filing a previous objection the defendant is limited to only a plain error and analysis, United States v Carr, 170 F.3d 572, 577 (6th Cir. 1999).

The defendant maintains he only recently learned of the deal and the actions of the prosecutor when he obtained the transcripts of the sentencings [DE-188, 189, 190]. There has been no opportunity to object and as will be discussed, neither of the attorneys retained post conviction brought the matter to the defendant's attention.

While not consenting to a limitation of plain error, defendant understands that a reversal would require a finding that (1) there is an error; (2) it is plain; (3) which affected the defendant's substantial rights; and (4) that seriously affected the fairness, integrity or public reputation of the judicial proceeding. United States v Carter, 236 F.3d 777, 783-784 (6th Cir. 2001).

The defendant the Court to the transcript of defendant Elliot's sentencing, [DE-190] and for contextual consistency, requests the Court to review the exchanges commencing at page 4 line 20 through and including page 12 line 15.

Co-defendant Elliot's counsel, Kenneth Lawson, described the "deal in the following manner:

"In order to end up into these plea bargains, it was presented to my client, since he was closest to Mr. Rennick, that if he was able to get Mr. Rennick to enter a plea, voluntarily enter a plea and also provide sub -- and get Mr. Rennick provide substantial assistance, he would receive, he being Mr. Elliot, would receive a 5K1. So Mr. Elliot's plea bargain and 5K1 is based on what Mr. Rennick was to do ...

[O]ur understanding of his [Elliot's] responsibility was to do, which was to get in discussions with his

friend to enter the plea and also provide substantial assistance." [DE-190, p 4-5] emphasis added.

Clearly the government set on a deliberate course of action bent on getting the defendant to enter a plea. Lawson made a forceful argument that Elliot was entitled to his 5K1 because he upheld his end of the bargain.

Lawson further argued that he had only just learned that the defendant had tape recordings of his attempts to cooperate, including phone calls from bonafide drug dealers, as well as conversations with RENU Agent John Mercado. Lawson critized defendant's counsel for not having a hearing on the extent of the defendant's cooperation and how serious he felt it was that defendant's shooting was not being recognized as a form of cooperation. [DE-190, p 6-7].

Lawson also confirmed that defendant's counsel, Gallagher, had full knowledge of the deal with Elliot.

"And Mr. Gallagher knows, [...], that that was the offer that was made to my client, because we had to come back out and let my client [Elliot] speak to Mr. Gallagher's client [the defendant]." [DE-190, p 10].

Mr. Lawson made it very clear he wanted to look into the tapes or other matters to determine what, if any, cooperation the defendant may have done. AUSA Brichler went off the record and spoke with Lawson. After the discussion the government suddenly withdrew its objection and reluctantly asked that Elliot receive his one third 5K1 reduction. AUSA Brichler

apparently not wanting to risk further complications stated:

"I want to make it clear that this motion for reduction is based upon what happened that day and it's not based upon any conduct that Mr. Rennick subsequently engaged in." [id. p 12].

The government rewarded Mr. Elliot for using his trust and influence to betray a friend. He received a one third reduction in his guideline sentence. The actions of the government were done in bad faith. While subverting the system by using Elliot to coerce a plea is reprehensible, the involving of defendant's counsel in the scheme is unexcusable and perverts the entire system.

At an evidentiary hearing the defendant will show, by examination of Attorneys Goldberg, Gallagher, Cohen, and Lawson, the extent of the betrayal by defendant's counsel for deliberately participating in this scheme.

"A decision to enter into a plea agreement cannot be knowing and voluntary when the plea agreement itself is the result of advice outside "the range of competence demanded of attorneys in criminal cases." Deroo v United States, 223 F.3d 919 (8th Cir. 2000) citing Hill v Lockhart, 474 U.S. 52, 56 (1985).

When the government conceived a scheme to manipulate a defendant into entering a plea a line was crossed. This was not a case of rewarding a co-defendant for "truthful" testimony against another defendant, this was trickery, exploitation of the defendant's mental state and his trust. As bad as that is, when defendant's counsel became a willing partner in the scheme and kept the defendant in the dark, the entire adversarial process broke down.

All of this because AUSA wanted to "[m]ake the trial go away" [DE-190, p 11].

The defendant, Steve Rennick, Sr., served this country with honor in the Vietnam war. The honors of the war came home in the chronic replays caused by his Post Traumatic Stress Disorder. One of the common side effects for PTSD patients is their desire to accomodate or go along with persons close to them. In the defendant's case his medical records reflect he was in group treatment. The "purpose of this group is to increase assertiveness by recognizing certain situations in which it is difficult to say 'no'." [Comp Ex-2C].

The reality here is that using Elliott and his "closeness" to the defendant and telling the defendant a plea was best for all; was coercion, it was a situation the defendant could not refuse. On August 19, 2003, AUSA Brichler adduced a plea from the defendant by coercion; coercion no less serious and no less effective than had he threatened the defendant with mortal harm. The defendant's plea in this matter should be withdrawn, the conviction reversed, and the defendant should be tried by a jury on the merits.

ISSUE II

DEFENDANT'S PLEA WAS UNKNOWING AND INVOLUNTARY AS DEFENDANT RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL

A criminal defendant's right to the assistance of counsel is

a necessity, not a luxury, Gideon v. Wainwright, 372 U.S. 335, 344 (1963). The defendant's attorney is a crucial component to the process because he is the vehicle through which the accused's other rights are preserved and effectuated, and without whom those other rights are practically meaningless id. As such this right to counsel has long been held to mean "the right to the effective assistance of counsel." [emphasis added]. McMann v. Richardson, 397, U.S. 759, 771, n.14 (1970).

The attorney client relationship requires the relationship be shrouded in secrecy. How does a judge know if an attorney fully and completely explained an offense, its elements and all possible penalties? How can this court know how attorney Gallagher persuaded the defendant to lie by pleading guilty when he wasn't guilty? The court doesn't know, and, therefore, an evidentiary hearing is required, and at that hearing the defendant will show the court the full extent of the lack of effective representation and the deliberate breach of the relationship's trust.

If the defendant does not receive proper assistance facing the complexities inherent in the law, then the defendant's rights have been violated. United States v. Ash, 413 U.S. 300, 309 (1973).

A. DEFENSE COUNSEL'S ASSISTANCE WAS INEFFECTIVE AND COMPROMISED WHEN HE PARTICIPATED IN GOVERNMENT'S SCHEME TO OBTAIN A GUILTY PLEA

The record of the sentencing hearing of co-defendant Elliot

makes it very clear that at the time Elliot was manipulating the defendant into entering a plea, defendant's counsel, William Gallagher, then well knew that the government had "hired" Elliot to manipulate the defendant. From the moment Gallagher became aware of the Elliot scheme and payoff of a one-third sentence reduction, and allowed same to continue, he ceased to represent the interests of the defendant.

The "benchmark for judging any claim of ineffectiveness must be whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland v Washington, 466 U.S. 668 (1984) at 686.

The court announced a two-part inquiry for making the determination: first, "the defendant must show that counsel's performance fell below an objective standard of reasonableness" as compared with "prevailing professional norms." ID 688. Second, the defendant must show he was prejudiced by his attorney's deficient conduct, by demonstrating that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceedings would have been different." ID, 694.

In guilty plea cases the Strickland test is refined: the defendant must show that his counsel's performance was deficient and "there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." Hill v Lockhart, 474 U.S. 52, 59 (1985).

It is regrettably evident that when attorney Gallagher became aware of the scheme to get co-defendant Elliot to use his "closeness" with the defendant, and thereby manipulate a plea of guilty; then, at that moment, attorney Gallagher ceased to represent the interests of the defendant.

There is no question that defendant's counsel witnessed and subsequently participated in the betrayal of his innocent client. In addition to going along with the "Brichler scheme;" Mr. Gallagher also participated proactively when he told his client that he would get a low sentence, maybe probation, when all along counsel knew the defendant faced a mandatory minimum of five years. He further sabotaged the defendant by ignoring the evidence of defendant's innocence and encouraged the plea.

"The fact remains that [the defendant] was entitled to effective assistance of counsel when he entered his plea, and this he did not receive. Had he received it, the decision to plead guilty would have been his own depending upon his informed appraisal of the attractiveness of the government's offer." Tolliver v United States, 563 F.2d 117 (4th Cir. 1977).

Tolliver suggests that a defendant is automatically prejudiced whenever his plea agreement is the product of ineffective assistance of counsel, by virtue of the fact that such an agreement cannot be truly voluntary.

In the instant matter the ineffectiveness manifested in a single action, the agreement to participate in the scheme to get the defendant to plead. This is similar to the event in Murray v Carrier, 477 U.S. 478, 496 (1986):

"[T]he right to effective assistance of counsel may in a particular case be violated by even an isolated error of counsel if that error is sufficiently egregious and prejudicial."

In interpreting the prejudice prong, the Supreme Court has identified a narrow category of cases in which prejudice is presumed. Strickland supra 692. The three categories of presumed prejudiced cases are: (1) denial of counsel; (2) State interference, and; (3) where counsel is burdened by an actual conflict of interest.

The defendant asserts the government interfered when it made defendant's counsel a party to the plea scheme and by doing so the defendant was denied counsel as he was compromised. Inasmuch as counsel hid the deal from the defendant and thereby assisted co-defendant Elliot it further appears to be a conflict of interest.

As discussed previously the defendant had assembled a meaningful defense with evidence and testimony and yet counsel scrapped the defense at the last minute for an ill conceived plea. If counsel "entirely fails to subject the prosecutions's case to meaningful adversarial testing" the adversarial process itself becomes presumptively unreliable. United States v Cronin, 466 U.S. 648, at 659 (1984). In this instance, counsel surpassed deficient conduct; he instructed his client to perjure himself by admitting crimes he did not commit. As the Affidavit in Composite Exhibit 2 A, B, C shows, his attorney told him to enter a "fictional plea" because he would supposedly receive a lesser

sentence. This act fell below an objective standard of reasonableness and acted to subvert the normal functioning of the adversarial process. Had defendant not entered the plea, he would not be in a federal prison today.

Finally, defendant expressed his desire to appeal his case [DE-156A at 20]. Counsel failed to file a timely notice of appeal or failed to determine whether the Clerk had so filed as requested. Prejudice is presumed when alleged ineffective assistance of counsel includes a basis of "unexcused failure to bring a direct appeal from a criminal conviction upon the defendant's direction to do so." Hernandez v United States, 202 F.3d 486, 489 (2nd Cir. 2000).

B. THE ACTIONS OF DEFENSE COUNSEL INDICATE A CONFLICT OF INTEREST

When defense counsel Gallagher willingly knew and participated in government's scheme to use Elliot and further secreted same from the defendant his actions served the interests of others apart from the defendant.

Whenever defense counsel operates under a conflict of interest, the defendant's right to effective assistance of counsel is impaired because; "counsel breaches the duty of loyalty, perhaps the most basic of counsel's duties." Strickland, supra at 692.

In Cuyler v Sullivan, 446 U.S. 335, 350 (1980) the Supreme Court ruled that a defendant can demonstrate a 6th Amendment

violation by showing that defense counsel was actively representing conflicting interests.

Defense counsel only represented the defendant. The defendant was clearly entitled to representation only concerned with his outcome and not that of anyone else. AUSA Brichler presented his plan to use Elliot to Elliot and his counsel, Lawson, but the deal required Gallagher to allow Elliot and Lawson access to the defendant and to subsequently endorse the plan. Indeed, when Lawson was forced to reveal the plan in court he made specific references to the court that Gallagher knew about the deal and verified the events in the face of the government's momentary "memory loss."

The record is clear, all parties knew of the scheme except the defendant. Gallagher's role in the scheme continued after the pleas were entered when all defendants were upset over the factual basis the government gave the court. The representations that the defendant sold or gave drugs to co-defendants Elliot and Benjamin were patently false and troubling. When all three co-defendants angrily inquired of all counsels as to what just happened; attorneys Gallagher, Lawson, and Cohen all supported the claim that they were "fictional pleas" and nothing would happen as long as they "went along."

Obviously the pleas weren't fictional and neither were the sentences. When three lawyers join in harmony to lie and conceal matters from their clients, the result is a conflict of interest.

There is a similarity to United States v Hall, 200 F.3d 962, 966 (6th Cir. 2000) in that a conflict of interest because counsel failed to forego a plea in client's best interest in order to protect a second defendant.

For reasons unknown, attorney Gallagher involved himself in a scheme of the government's design and interest and in doing so he became conflicted in his interests, and brought harm upon the defendant.

ISSUE III

THE GOVERNMENT BREACHED THE SPECIFIC TERMS OF DEFENDANT'S PLEA AGREEMENT

As previously stated, defendant never desired a plea. The government, as part of defendant's inducement, was promised he could "work off" the sentence by cooperation. As inducement, the government and defendant's counsel placed great emphasis on the fact that the defendant could "cooperate" with the government and receive a substantial sentence reduction pursuant to U.S.S.G. § 5K1.1. The plea agreement provided:

"5." The government agrees to file, upon the defendant's substantial assistance, a motion with the court for a downward departure from the guideline sentence, stating that the defendant has made a good faith effort to provide substantial assistance in the investigation and prosecution of other persons who have committed offenses. The filing of such motion shall be the sole discretion of the U.S. Attorney for the Southern District of Ohio. If such a motion is filed, the defendant understands that it is not binding on the Court. Such a motion is authorized by § 5K1.1 of the Sentencing

Guidelines and 18 USC § 3553(e). If such a motion is filed it will be in reliance on the defendant's continued cooperation. If the defendant should later refuse to testify the government may, at the government's option, petition the court to set aside the defendant's sentence and sentence him without a downward departure or seek to set aside the defendant's plea and reinstate the Indictment." [DE-104, p 5] [emphasis added].

"Plea agreements are contractual in nature. In interpreting and enforcing them, we are to use traditional principles of contract law." United States v Robinson, 924 F.2d 612, 613 (6th Cir. 1991); see also United States v Wells, 211 F.3d 988, 995 (6th Cir. 2000) (quoting same). A court should hold the government to a greater degree of responsibility than the defendant for imprecisions or ambiguities in plea agreements id at 995 (citing United States v Johnson, 979 F.2d 396, 399 (6th Cir. 1992)).

Although plea agreements are governed by contract principles, Due Process Clause requires these principles be supplemented with concerns that bargaining processes not violate defendant's right to fundamental fairness. United States v Schilling, 142 F.3d 388, 394 (7th Cir. 1998).

In the instant matter the plea agreement states; "the government agrees to file a motion, upon the defendant's substantial assistance [] for a downward departure" The defendant avers that terms "agrees to file" implies an obligation to file the motion which has, in fact, bargained away the government's reservation of "sole discretion."

In the plea agreement the government's language states it would file the downward departure stating the defendant "has made

documenting the defendant's shooting, including medical records.

The defendant raised the issue of the downward departure at sentencing including the shooting to which the government responded:

"I became convinced that whatever happened to Mr. Rennick was basically caused by his inability to follow the requests and the guidance of the agents who were attempting to work with him." [DE-188, p 11].

The government went on to say it did not intend to make said motion. Defendant contends that the government bargained away its "sole discretion" when it decided to induce the defendant's plea by promising a substantial reduction in sentence with a \$ 5K1.1 departure. Defendant further contends that the government only refused to credit the defendant because doing so may have left the government with liability stemming from a registered confidential informant being shot while working with the government and its agent.

The plea agreement further argued that if the defendant subsequently refused to continue to cooperate by testifying, then the government could reverse the departure. This language further suggests the government's obligation to make the motion.

The plea agreement is very ambiguous. The inclusion of the "agrees to file;" "good faith effort to provide;" and "option to withdraw departure" clauses in this agreement distinguishes the instant agreement from the agreement in United States v Head, 927 F.2d 1361 (6th Cir.), cert denied, 502 U.S. 846, 112 S.Ct. 144, 116 L.Ed.2d 110 (1991), in which the court determined the

government retained its discretion. In this case the inclusion of such mandatory language is inconsistent with the statement that the U.S. Attorney has the sole discretion.

The "sole discretion" language is not entirely clear. It would be clearer, for example, to state that the government retains the exclusive right to determine whether the defendant has "made a good faith effort to provide substantial assistance." As it is currently phrased, the "sole discretion" language may be read as a restatement of the fact that § 5K1.1 motions must originate with the government, whether or not the government waives its discretion to deny such motions. There is ambiguity in the agreement as to whether the government retained its discretion or bargained it away.

The rules of construction of plea agreements dictate that the agreement be interpreted to impose a binding obligation on the government. Johnson supra at 399 (holding that ambiguities in plea agreements are construed against the government); see also UNITED STATES v Houston, 40 Fed. Appx. 139 (6th Cir. 2002)(unpublished) holding that the government did not reserve discretion to make 5K1.1 motions based on the use of discretionary and nondiscretionary language in the plea agreement creating an ambiguity.

While the government offered to have the court examine the case agent, the court ultimately made no inquiry as to whether the defendant had made "a good faith effort to provide substantial assistance."

This is a case outside the mainstream in many ways. The defendant is coerced and manipulated into pleading guilty to a crime he did not commit; as part of his inducement he is promised a downward 5K1.1 departure for nothing more than a good faith effort to provide substantial assistance; he establishes tape recorded conversations for drug purchases only to be thwarted by his case agent; he was shot twice while working for the same agent and then is denied the departure. All of this then is combined with evidence suggesting the case agent, John Mercado, was involved in the shooting and the government contracting with a co-defendant to talk the defendant into pleading guilty (as set forth herein) and it leaves no doubt that something is vastly wrong.

This court has recognized that "fundamental fairness" requires the court to enforce promises made in a plea agreement that induces the defendant to plead guilty. "Where a defendant fulfills his promise in entering a guilty plea, the prosecution is bound to fulfill any promise made in exchange." Robinson, supra 613.

The defendant first raised these issues at sentencing when the defendant argued for a Downward Departure [DE-147] they were further raised in defendant's Motion to Reconsider [DE-149] and again his Motion to Withdraw Plea of Guilty [DE-162]. The 10th Circuit has adopted a general rule that the defendant need not raise his claim of breach at trial. See United States v Peterson, 225 F.3d 1167, 1170 (10th Cir. 2000).

The defendant was at the very least entitled to an evidentiary

hearing to determine the nature of the promises made and the extent of the good faith effort to cooperate. See Pearcy v United States, 31 F.3d 1341, 1345-46 (6th Cir. 1994); United States v Watson, 988 F.2d 544, 551-52 (5th Cir. 1993), see also Blackledge v Allison 431 U.S. 63, 76, 80-82 (1977) "allegation of breach entitles defendant to an evidentiary hearing unless defendant's allegations are "palpably incredible" or "patently frivolous or false."

The government at sentencing attempted to state the reason they refused to move for the 5K1.1 reduction was because of failures on the defendant's part. The government may now decide to claim a breach by the defendant. However, before the government can decline to fulfill its own obligations under the plea agreement, it must first prove by a preponderance of evidence that defendant breached the agreement. United States v Lukse, 286 F.3d 906, 913 (6th Cir. 2002).

In the instant matter the defendant entered into an agreement to plead guilty. He did this not because he was guilty, but because he was manipulated into the plea by the government. A major part of his decision to plead was the government's promise to substantially reduce any sentence in return for his good faith effort to help the government. The defendant put forth that good faith effort, got shot and nearly killed and the government ignored its obligation. AUSA Brichler honored an illegal deal with co-defendant Elliot and refused to honor a lawful obligation to the defendant.

Inasmuch as the government breached its written plea agreement with the defendant, the defendant should be relieved of his obligation and be allowed to withdraw his plea and be tried by a jury on the merits of the case.

ISSUE IV

DEFENDANT WAS DENIED HIS SUBSTANTIAL RIGHTS OF
DUE PROCESS WHEN THE COURT ERRED BY DENYING
HIS MOTION FOR DOWNWARD DEPARTURE, MOTION FOR
RECONSIDERATION, AND MOTION TO WITHDRAW PLEA
WITHOUT AN EVIDENTIARY HEARING ON THE FACTS,
CIRCUMSTANCES, AND POINTS OF LAW

A. DEFENDANT MADE A GOOD FAITH EFFORT TO COOPERATE.

Attached hereto is the defendant's Sworn Declaration concerning his good faith effort to cooperate with the government. Defendant incorporates the statements in said Declaration as though they were set out herein. [Exhibit 3D]. See also AFFIDAVIT of Anthony Battle [Ex 3E]

It is clear from defendant's declaration that this instant matter is far removed from the heartland of cases considered by the U.S. Sentencing Commission or Congress' intent in creating downward departures for providing substantial assistance to law enforcement. In the case at bar, the defendant established verifiable contact with two separate drug dealers. In both cases the deals collapsed through no fault of the defendant. Most important are the tape recordings which fully support defendant's position

and claims. [Comp Ex-4] .

The use of confidential informants is the mainstay of today's law enforcement, and to some large degree is responsible for most successful prosecutions, but this one fell apart and in the end nearly killed the defendant. No one wants to address this issue and that is understandable since publicity that an informant got shot would impede many from agreeing to participate and when one adds the factor of the case agent being involved in the shooting it quickly becomes a prime candidate for cover-up.

The defendant agreed to cooperate and put forth much more effort than most. Agent Mercado failed. He didn't assist the defendant in the least, he pulled the plug each time a close was in sight, and an independent eye witness has now identified John Mercado as one of the two men leaving the rear of defendant's warehouse where the defendant laid shot and bleeding in the front parking lot.

The U.S. Sentencing Guidelines (USSG) list items to be considered when evaluating a 5K1.1 departure: "(4) any injury suffered, or any danger or risk of injuries to the defendant or his family resulting from his assistance." U.S.S.G. § 5K1.1(a)(5).

In re Sealed Case No. 97-3112, 181 F.3d 128, 142 (DC 1999) (en banc) "although court normally lacks the authority to depart from Sentencing Guidelines on the basis of defendant's cooperation absent prosecutorial motion, if cooperation was pursuant to plea agreement and government's refusal to file a motion is attributed

bad faith or other breach of the agreement the court may grant relief. See United States v Overstreet, 51 Fed Appx 838, 841 (10th Cir. 2002). When the defendant contends that the government's failure violates the plea agreement the court must determine whether the government came to the decision to not file the motion in good faith ID at 842 (citing United States v Cerrato-Reyes, 176 F.3d 1253, 1264 (10th Cir. 1999)).

This circuit has stated where a condition of the plea agreement is that the government will file for downward departure if the defendant provides substantial assistance and the filing of that motion is, therefore, not solely within the government's discretion, the defendant is not limited solely to arguing unconstitutional motives to challenge the failure to file such a motion. United States v Williams, 176 F.3d 301 (6th Cir. 1999). A defendant is entitled to an evidentiary hearing on the issue of whether the departure motion should have been filed and should be granted. United States v Wolf, 270 F.3d 1188, 1190 (8th Cir. 2001)(citing Wade v United States, 504 U.S. 181, 186 (1992)).

ISSUE V

DEFENDANT WAS DENIED HIS RIGHT TO DIRECT APPEAL WHEN THE COURT CLERK FAILED TO FILE DEFENDANT'S NOTICE OF APPEAL AS DIRECTED

The record indicates the defendant expressed his desire to appeal his sentence and his request that the court clerk file the

notice of appeal [DE-188 at 19-20]. The clerk failed to file said notice and ultimately appellate counsel also failed to do same. The defendant filed a motion seeking reinstatement of direct appeal right [DE-191]. The court denied said request to the extent it lacked the authority subject to Fed Rules of Criminal Procedure or Rule 4(b) of the Federal Rules of Appellate Procedure.

The court suggests that if defendant can demonstrate "that his constitutional rights were violated, then this court must vacate the judgement against Petitioner and reimpose his sentence so that Petitioner can file a timely appeal." United States v Hirsch 207 F.3d 928 (7th Cir. 2000) at 931.

The defendant submits that in order to use this method he was nevertheless required to bring forth all issues for relief to avoid foreclosure of same in the future. The defendant acknowledges that all matters desired to be appealed are set forth herein. In the event the court should deny relief on the matters herein, the defendant requests his sentence to be vacated and reimposed so that he may then have a direct appeal.

CONCLUSION

This case is far removed from the heartland of most cases. An innocent defendant with certain mental problems is manipulated to enter a guilty plea. He then is commissioned as a Confidential Informant to work with drug enforcement agents in the purchase of large quantities of drugs. Defendant is allowed to get himself

into a transaction for over a million dollars only to find agents unwilling to complete the deal, leaving the defendant on a limb with no net.

If this were not enough the defendant is shot twice by someone connected to the deal. Defendant identifies the shooter's voice as being the same voice on recorded threat calls, but there's more; defendant recognizes the second voice at the shooting as Detective John Mercado. The very case agent on this case is seen by a witness leaving the scene of the crime. More remarkably, this same agent shows up at the emergency room less than twenty minutes after the shooting with no explanation as to how he knew the defendant was shot, let alone where he was taken.

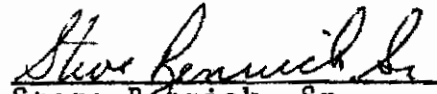
The defendant contends his plea was neither willing nor knowing, and his sentence devoid of any mitigating consideration. Steve Rennick is simply not guilty and never was. He had informed the court prior to sentencing that he was not guilty and certainly the court knew of his claims of innocence before the imposition of the sentence and, perhaps, should have vacated the plea at that time.

The defendant prays this court to vacate his sentence in this matter and further to allow the defendant to withdraw his plea and stand trial on the merits. Defendant Steve Rennick is an honored veteran, businessman, father, and grandfather, who stands convicted for matters he did not know about and did not do. The government obtained this conviction by deceit and manipulation and the

defendant only seeks his right to be legally tried on these untrue allegations.

Further defendant saith naught.

Respectfully submitted,

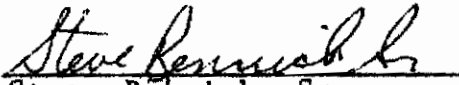

Steve Rennick, Sr.
#04050-032 HCU
Federal Medical Center
P.O. Box 14500
Lexington, KY 40512

1/20/05

CERTIFICATE OF SERVICE

I certify that the above true and correct Memorandum In Support of Motion to Vacate pursuant to 28 USC Section 2255 was provided to the Clerk of the Court at the address below. I further certify tht I sent one original with two true copies pursuant to 28 foll. 2255 Rule 3(A) and I understand the Clerk is to serve the United States pursuant to 28 USC Section 2255 Rule 3(B). All copies deposited, postage prepaid, into the prison mail service on this, the 20 day of January 2005.

Clerk of the Court
U.S. District Court
Southern District of Ohio
100 East Fifth Street
Cincinnati, OH 45202


Steve Rehnick, Sr.
#04050-032 HCU
Federal Medical Center
P.O. Box 14500
Lexington, KY 40512

Steve Rennick
2 Peachtree Ct.
Fairfield, Ohio 45014
December 2, 2003

Judge Dlott
Federal Court

Dear Judge Dlott:

I have been told that I may write you a letter prior to my sentencing which is scheduled for December 9, 2003. I am writing this letter to make you aware of all the circumstances surrounding my case.

During the summer of 2002 I met two Jamaicans, Phillip Davidson and Kareem Cole. They were promoters of Reggae music and traveled throughout the United States setting up Reggae concerts. They approached me and asked if I would transport them to the various concerts. Phillip also showed an interest in sponsoring my racecar. We gave him a proposal and sent proposals to companies in Jamaica which he claimed to have connections with. I actually talked to people in Jamaica and so did our marketing director for the race car team.

I was so eager to get a sponsor for the race car I would have done anything and Phillip made sponsorship seem possible. Wayne Benjamin and I took Phillip and Kareem to Phoenix Arizona March 2002. Phillip had arrangements for us to stop at a camping spot in Goodyear Arizona. He was picked up by a group of Jamaicans in an SUV. We didn't see him again until Sunday night when they dropped him back off. Nobody asked any questions when they came back they had the same luggage they left with. I was paid \$5000 for this trip and out of the \$5000 I paid Wayne \$1000 and it cost about \$1200 for fuel out and back and \$30 a day at the campsite.

We made a total of 3 trips with Phillip and Kareem. On the second trip Phillip flew out from his wife's house in New York. All the while he kept promising to sponsor the race car and I kept going along with him. On the last trip Phillip flew back because he had a Reggae show scheduled for Friday at Swifton Commons "The Ritz". I personally attended 2 of his shows at the Ritz and Wayne and I did go to a couple of them in Arizona. He was a legitimate band promotor.

During this time Kareem rented the front shop for storage of equipment and also planned to start an auto service center.

On October 16, 2002 Eddie Moore was caught selling Marijuana to the RENU squad in Norwood. Marijuana was found at the property on North Bend Road in the front shop rented by Kareem Cole. I was in turn arrested. I knew nothing about the Marijuana at the shop. They arrested my son, Wayne and Matt Elliot. The charges were eventually dropped against my son.

After postponement after postponement we were advised to plead out. I decided to plead out mainly because I have a past record. From the time of our plea till the time we went in front of the judge the wording on the plea got entirely turned around. For instance they said I gave Wayne a pound of marijuana. I never gave Wayne and pound of marijuana and he will verify this. They also said I sold Matt Elliot marijuana and he will also deny this. Matt has said this to several people. I have never sold Marijuana to anyone.

Even though I have never sold drugs in my life since I had a past record I thought it would be better to plead to something so I could get a sentence reduction. I am accepting responsibility for taking the Jamaicans to Arizona. I am accepting responsibility for not really asking or caring what they were doing in the hopes I could get a race car sponsor.

At the pleading I spoke to Bill Gallagher, my lawyer, about the possibility of working with the RENU squad. I meant to show them where I dropped the Jamaicans off in Arizona and anything I thought might be helpful for them to bust the guys the Jamaicans were getting the Marijuana from. Bill Gallagher said he spoke to Mr. Brickler and he would be willing to work with me on my sentence reduction in exchange for working with them to find the people who were the Arizona connection. Mr. Goldberg who had been my son's attorney advised me this would be very dangerous and I should reconsider.

I was desperate. I haven't been in trouble in almost 10 years. I have a profitable trucking business and a family. I have never had anything to do with drugs and I just wanted all this to be over. I chose to work with the RENU squad. The next day I spoke to John Mercado of the RENU squad. He gave me a card and said to get with him so we could get working on a drug bust. I called Bill Gallagher immediately and asked him if he would go

with me to speak to John Mercado because I wanted my lawyer present. He said just go ahead and work with Mercado and do what he says.

This was the beginning of my worst nightmare. At my first meeting with John Mercado I signed three papers called C.I. papers and was fingerprinted. At this time I learned they didn't want any information related to Arizona. Mr. Brickler wanted a drug bust in the Eastern District of Ohio. I was told Phoenix was out of their jurisdiction and they didn't really care about out there. Since the information related to Arizona was really all I knew, I knew I was in trouble.

This was a real problem for me because I have never sold or used drugs in my life and I don't know any drug dealers. I soon found out contrary to what everybody says about drug dealers being on every corner they are not easy to find or approach. Especially when you are trying to buy over 500 pounds, which I was told was the amount I needed to buy to get my sentence reduced.

One of my friends, Tony Battles, had recently gotten out of the Justice Center for Domestic Violence. While he was there he met a Jamaican named Solje Anderson. Solje told Tony any time he needed Marijuana just come to him and he'd get him as much as he needed. Tony wanted to help me out so we called Mercado and told him about Solje Anderson. Tony and I both went down to the Renu Center and met with John Mercado. At this time John Mercado punched up Solje Anderson's rap sheet and got a picture of him which Tony identified. At this time Mercado told Tony and I if this bust was over 500 pounds I would only get probation. We were given a tape recorder by John Mercado and told to tape any phone conversations which we did. I have copies of all the tapes.

The days went by, Tony and I talked to Solje Anderson or his people on several occasions. They didn't have that large of an amount of Marijuana in Cinti. They told us they could make us a good deal if we wanted to go to Arizona and help them bring Marijuana back. We talked to John Mercado about this and said yes, and to try to get the details worked out.

The way it was supposed to work was they were supposed to get us 1500 lbs. For \$600 a lb. We were also going to help them bring back 2000 pounds of their own Marijuana. John Mercado said he would do this at first.

He later said his boss said we couldn't do it this way because it wasn't by the book and they could lose their money.

We cut communications with Solje Anderson and did not hear any more from him. We turned off our cell phones.

The next deal I tried to put together was also a disaster thanks to the RENU squad. A driver at the shop told me about a guy in Northside named Yamine Israel. This driver gave him my number and he called me. I told him I was looking to buy 500 lbs. of Marijuana. He gave me a number to call him back to discuss the deal. He told me he would only answer 541-3777 my shop number. He had a throw away phone and changed numbers every few days. I called John Mercado and told him about the deal. He said to make sure I tape record all the conversations. I called Yamine and set up a deal for 500 lbs. John Mercado insisted we do the deal at my son's trucking company which everybody including Kevin Coo thought was stupid and risky.

The first night the deal was set up John Mercado had about 20 agents at the garage. I was wired. Yamine's phone was not working so we couldn't get a hold of him. Yamine was supposed to have called us by 7:00PM. When he didn't call the RENU squad waited till about 9:00 then went home. The next day I got a hold of Yamine. (If you listen to the tape you can see how desperate I sound and how I know nothing about Marijuana) We set up another deal with Yamine a few nights later. The same scenario 20 cars parked out back, sheriffs running in and out with their flack jackets on. It was really obvious to anyone passing by what was going on. Again I was unable to reach Yamine. I called my friend who knew Yamine and was told that Yamine came by, pulled through the drive way and noted all the cars, and sheriffs coming in and out and stated "this guy is a cop, this is a set up". Since then I have not been able to contact Yamine.

Using my son's business location was a very big mistake. This not only jeopardized me but my family as well.

After these two attempted drug busts failed I was getting desperate. I had no other prospects. Then out of the blue a guy called on the garage phone 541-3777 saying the 1500 lbs. of marijuana I ordered from Solje Anderson was in. He said the price was now \$800 lb. Since they brought it from Arizona. He said we would agree on a location and he would come

alone with a money counter (the machines like they use at the bank) and count the money. When he was certain it was all there he would make a phone call and the marijuana would be delivered to the agreed upon location.

I called John Mercado and told him what was going on. He said that he couldn't come up with any money. The guy was set up to call back on Sunday at 2:00PM and for me to 3 way John Mercado. John instructed me to call him Joe Wilson, the money man. John planned to tell the guy that he couldn't get the money out of the bank till Monday or Tuesday and they he could probably only get half and the drug guy would have to front him the other half of the Marijuana. This sounded crazy to me since this guy had never met either one of us, but what do I know.

At 2:00PM on Sunday the drug guy called as he said he would. I did a 3 way call and dialed John Mercado's cell phone number. A woman answered. I asked for Joe and she said I had the wrong number and hung up. I told the drug guy to hang on that I was going to dial the number again. This time I got John Mercado's answering machine. By this time the drug guy was really upset. His exact words were "You're dead Rennick, we've had a bead on you for two days, you're dead". Then he hung up the phone.

I tried John back a few more times. I finally got him and told him about the guy's threat on my life. John said if he calls back again try to get me back. I then called Bill Gallagher, my lawyer, because I was scared to death. Bill said to call the RENU squad and to talk to the person on duty. That there is always somebody on duty 24 hrs a day. I left a message and a guy named Brian called me back. I explained what had happened and about the death threat and he said don't worry, be careful and go home. Bill Gallagher also said he would call me back. I waited at the shop with all the doors locked for several hours. Nobody called me back, I couldn't get a hold of anybody. Finally I went home. I went a different route making sure nobody was following me.

Monday came I didn't hear from anybody. I finally got a hold of Bill Gallagher and I asked what was going on, why hadn't he called me. He stated since he hadn't seen anything on the news or read about me in the paper I was all right.

During the next few days I talked to John Mercado and was told if the guy calls back see what I could work out. I knew nothing would ever be worked out and that I was a dead man.

On Friday night I was getting ready to leave the shop about 9:30PM. I had just finished working on the Autocar dump truck which was scheduled to go out the next morning. I was alone and had just finished washing my hands in the washroom. The lights were out in the other shop and only one light was on in the washroom. I came out of the washroom and turned to the left out to pick up my jacket when I felt someone come up behind me, placing a gun to the back of my head and saying "Rennick you're dead". I knew the front door was unlocked and I turned to push the gun away. I heard two shots go off and felt my whole body move like I was hit with a baseball bat. I started running and yelling out the front door toward the drive thru next door. I got halfway and fell to the ground. I was yelling and screaming for help. The people at the drive-thru heard me yelling and saw me laying in the parking lot between the garage and the drive-thru.

Wesley Hahn and his worker came running toward me to see what was wrong. I kept yelling "Don't let him kill me, don't let him kill me". They tried to call 911 from the phone booth a few feet away and were put on hold. Wesley then ran into the street (North Bend Rd.) and flagged down several cars looking for someone with a cell phone. A few people had cell phones and called 911. I was taken to University Hospital E.R.

At the E.R. John Mercado and Kevin Coo came in to see how I was doing. They looked at my x-ray and asked if I saw who shot me. I told them I hadn't seen the guy's face but the voice was the same one I heard a week ago on the phone when I was trying to set up a deal for 1500 lbs. I told John Mercado days before and even let him listen to the tape with the guy threatening me.

I spent two days in the hospital and was released on the third day because my wife is an RN and the doctors felt she would be able to manage my care at home. I was scared to death that going home would put my family at risk. I have only been out of my house twice since being released from the hospital. Both times it was to see the doctor. I have a Physical Therapist come to the house three times a week and work with me. I sleep in a hospital bed in my living room and have blinds drawn on all my

windows. My family makes sure I am never alone. There is always someone with me.

I know I made a serious mistake getting mixed up with Phillip Davidson and Kareem Cole. I take full responsibility for driving them out to Arizona in the hopes that they would sponsor my racecar. I am not a drug dealer. I have never dealt or even used drugs in my life. I was willing to do anything in the world to make this nightmare go away and not destroy my family, my business, and my life.

When I agreed to plead it was supposed to be to some kind of possession charge since the Marijuana was found on property I rented to Kareem Cole. I didn't go to court because I do have a past record (never any drug charges) and they were threatening to drag my family into this.

When I got to court everything had changed. All of a sudden they read Wayne Benjamin had received a pound of Marijuana from me and Matt Elliott had bought Marijuana from me. Both of these statements are totally false. My lawyer told me this was a fictional plea. With this fictional plea I was to get a reduction in my sentence for accepting responsibility. I have no problem accepting responsibility but I am NOT a drug dealer. I have never had any Marijuana on me to give or sell to anyone.

I agreed to be a C.I. and told Bill Gallagher I would take the D.E.A. to Arizona where I dropped off Phillip and Kareem and try to find them a connection for Marijuana there. I don't have any connections here. I tried everybody I could think of to help me and I feel I not only jeopardized my life but theirs too.

Now I have two bullets in me. I can barely walk. I have a steel rod down my left leg and can't lift any weight with my left arm for three months. I have received phone calls at my house that were hang ups. I never go outside or stay alone at home. My son can never go to the trucking company alone and my whole family looks over their shoulders everytime anyone goes to work or even outside. This is a painful awful life. I honestly feel this guy isn't finished. I think he's just waiting for another opportunity to finish me off.

I feel I've already been sentenced. I've got a death sentence. It doesn't seem anyone has much concern for my safety. Injuries aside I don't

feel I'd last long in prison. I'm sure if these people want me bad enough they'll find a way to get me even in jail.

Judge Dlott, I was made a deal by John Mercado. I was told that he worked for Bill Brickler and whatever they said they would stand by it. I was told if I got them a Marijuana deal over 500 lbs. I would get probation. I tried my best and almost got killed. As desperate as I was I did get together 2 separate deals that went bad due to the RENU squad not coming through.

I'm sorry for this whole thing. I wish to God I never met Phillip and Kareem. I'm really afraid for my safety if I am incarcerated. I can hardly walk and spend most days in excruciating pain.

I'm sorry this letter has gotten so long. I know you are a very busy person and I'd like to thank you for taking the time to read this letter.

Sincerely,

Steve Rennick

Medication

Jan 26, 2004

✓ QUETIAPINE FUMARATE 25MG TAB
TAKE ONE TABLET BY MOUTH AT BEDTIME

Status: ACTIVE
Start date: JAN 21, 2004
Stop date: JAN 21, 2005
Refills remaining: 1
Days supply: 30
Quantity: 30

Comments:

✓ SERTRALINE HCL 100MG TAB
TAKE ONE TABLET BY MOUTH EVERY MORNING FOR DEPRESSION/MOOD

Status: ACTIVE
Start date: JAN 21, 2004
Stop date: JAN 21, 2005
Refills remaining: 1
Days supply: 30
Quantity: 30

Comments:

WARFARIN (COUMADIN) NA 5MG TAB (SP)
TAKE ONE AND ONE-HALF TABLETS BY MOUTH EVERY DAY TO THIN BLOOD

Status: DISCONTINUED (EDIT)
Start date: JAN 21, 2004
Stop date: JAN 21, 2005
Refills remaining: 1
Days supply: 30
Quantity: 45

Comments:

WARFARIN (COUMADIN) NA 5MG TAB (SP)
TAKE ONE AND ONE-HALF TABLETS BY MOUTH EVERY DAY ON SUN, TUES, WED, FRI - , ALL O

Status: ACTIVE
Start date: JAN 21, 2004
Stop date: JAN 21, 2005
Refills remaining: 1
Days supply: 30
Quantity: 50

PATIENT NAME AND ADDRESS (Mechanical Imprinting, if available)

RENNICK, STEVEN
2 PEACHTREE COURT
FAIRFIELD, OHIO 45014
300463291

VISTA Electronic Medical Documentation

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[EX-2A P1 JA-232]

Medication

Jan 28, 2004

Comments:

✓ RISPERIDONE 1MG TAB
TAKE ONE TABLET BY MOUTH AT BEDTIME

Status: DISCONTINUE
Start date: JUN 16, 2003
Stop date: JUN 16, 2004
Refills remaining: 1
Days supply: 30
Quantity: 30

Comments:

✓ SERTRALINE HCL 100MG TAB
TAKE ONE TABLET BY MOUTH EVERY MORNING FOR DEPRESSION/MOOD

Status: DISCONTINUE
Start date: JUN 16, 2003
Stop date: JUN 16, 2004
Refills remaining: 1
Days supply: 30
Quantity: 30

Comments:

✓ TRAZODONE HCL 100MG TAB
TAKE TWO TABLETS BY MOUTH AT BEDTIME

Status: ACTIVE
Start date: JUN 16, 2003
Stop date: JUN 16, 2004
Refills remaining: 1
Days supply: 30
Quantity: 60

Comments:

IBUPROFEN 800MG TAB
TAKE ONE TABLET BY MOUTH THREE TIMES A DAY WITH FOOD

Status: DISCONTINUED
Start date: APR 17, 2003

PATIENT NAME AND ADDRESS (Mechanical Imprinting, if available)

RENNICK, STEVEN
2 PEACHTREE COURT
FAIRFIELD, OHIO 45014
300463291

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[EX-2A_P2_JA-233]

Medication

Jan 26, 2004

Comments:
NOT TO EXCEED 4GM PER DAY

ANTACID/SIMETHICONE LIQUID PO Q4H PRN
15ML

Status: DISCONTINUED
Start date: JAN 15, 2004@10:33
Stop date: JAN 22, 2004@11:19:34
Comments:
indigestion

✓ LORAZEPAM TAB PO TID7 PRN

Status: DISCONTINUED
Start date: JAN 15, 2004@10:54
Stop date: JAN 22, 2004@11:19:34
Comments:

SERTRALINE TAB PO QD7
100MG

Status: DISCONTINUED
Start date: JAN 15, 2004@10:33
Stop date: JAN 22, 2004@11:19:34
Comments:

DOCUSATE SODIUM U.D. CAP, ORAL PO QD7
100MG

Status: DISCONTINUED
Start date: JAN 15, 2004@14:12
Stop date: JAN 22, 2004@11:19:34
Comments:

QUETIAPINE FUMARATE TAB PO QHS
25MG

Status: DISCONTINUED
Start date: JAN 16, 2004@09:46
Stop date: JAN 22, 2004@11:19:34
Comments:

WARFARIN TAB PO QD17

PATIENT NAME AND ADDRESS (Mechanical Imprinting, if available)

RENNICK, STEVEN
2 PEACHTREE COURT
FAIRFIELD, OHIO 45014
300463291

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[EX-2A P3 JA-234]

Jan 26, 2004

Medication

7.5MG

Status: DISCONTINUED

Start date: JAN 18, 2004@12:04

Stop date: JAN 22, 2004@11:19:34

Comments:

OXYCODONE TAB PO QHS
5MG

Status: DISCONTINUED

Start date: JAN 20, 2004@21:00

Stop date: JAN 22, 2004@11:19:34

Comments:

OXYCODONE TAB PO QHS
5MG

Status: EXPIRED

Start date: JAN 19, 2004@21:01

Stop date: JAN 20, 2004@21:00

Comments:

OXYCODONE TAB PO QHS
5MG

Status: EXPIRED

Start date: JAN 16, 2004@09:46

Stop date: JAN 19, 2004@21:00

Comments:

WARFARIN TAB PO SU-TU-FR@1700

Status: DISCONTINUED

Start date: JAN 16, 2004@00:01

Stop date: JAN 18, 2004@12:04:14

Comments:

WARFARIN TAB PO MO-WE-TH-SA@1700

Status: DISCONTINUED

Start date: JAN 15, 2004@14:28

Stop date: JAN 18, 2004@12:04:13

PATIENT NAME AND ADDRESS (Mechanical Imprinting, if available)

RENNICK, STEVEN
2 PEACHTREE COURT
FAIRFIELD, OHIO 45014
300463291

VISTA Electronic Medical Documentation

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[EX-2A P4 JA-235]

Progress Note

Ja

TITLE: MHICM SCREENING INPATIENT (B/T)
 DATE OF NOTE: JAN 23, 2004@10:09 ENTRY DATE: JAN 23, 2004@10:09:21
 AUTHOR: CARTER, AMY L EXP COSIGNER:
 URGENCY: STATUS: COMPLETED

This patient has met the high-risk criteria for consideration as a candidate for the mental health intensive case management (MHICM) team. This includes an ICD-9 diagnosis of 295-298, and either 3 or more admissions in the past 12 months or 30 days total of inpatient psychiatric care in the past 12 months.

Is this patient's discharge plan to a nursing home, domiciliary or other inpatient setting? No

If the answer is Yes, further assessment for MHICM is not warranted at this time. If the answer is No, the following assessment is required.

This patient also meets the following clinical criteria:

1. Diagnosis of Severe and Persistent Mental Illness: Diagnosis of severe and persistent mental illness includes, but is not limited to: schizophrenia, bipolar disorder, major affective disorder, or severe post-traumatic stress disorder.

Patient meets criteria? Yes

2. Severe Functional Impairment: Severe functional impairment is such that the veteran is neither currently capable of successful and stable self-maintenance in a community living situation nor able to participate in necessary treatments without intensive support.

Patient meets criteria? Yes

3. Inadequately Served: This means inadequately served by conventional clinic-based outpatient treatment or day treatment.

Patient meets criteria? Yes

4. High hospital use as evidenced by over 30 days of psychiatric hospital care during the previous year or three or more episodes of psychiatric hospitalization.

Patient meets criteria? Yes

5. Clinically Appropriate for MHICM Approach: Patients who are more appropriately managed clinically as inpatients need to remain in the inpatient setting; that is, the positive aspects of MHICM should not be used to justify moving patients who would be better served by inpatient care to this ambulatory care model.

Patient meets criteria? Yes

Does patient meet all five criteria for treatment by MHICM? Yes

If patient meets all five criteria, he should be referred to the MHICM team for follow-up care prior to discharge.

Patient referred to MHICM? Yes

If patient meets all five criteria, but is not being referred to MHICM, please explain

PATIENT NAME AND ADDRESS (Mechanical Imprinting, if available)

RENNICK, STEVEN
 2 PEACHTREE COURT
 FAIRFIELD, OHIO 45014
 300463291

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[EX-2B P1 JA-236]

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Progress Note

Jan 26, 2004

/es/ AMY L CARTER

MSW

Signed: 01/23/2004 10:09

Receipt Acknowledged By:

01/23/2004 16:13

/es/ CYNTHIA S MARTINELLI

MSW,LSW

TITLE: PT ED - DIAGNOSIS/HEALTH STATUS (B)
 DATE OF NOTE: JAN 22, 2004@10:49 ENTRY DATE: JAN 22, 2004@10:49:49
 AUTHOR: RONSHEIM,DONNA J EXP COSIGNER:
 URGENCY: STATUS: COMPLETED

PATIENT EDUCATION:

Interdisciplinary Patient/Family Education for Diagnosis/Health Status

Patient/Family received education at this encounter.

Specific Topic Taught/Learned: Symptoms Management-Saying NO

Knowledge of Disease/Problem: Group-no assessment

The best method(s) for learning is group class.

Patient has no barriers to learning.

Patient was taught using verbal discussion method.

Patient agrees to follow instruction.

Thirteen patients attended group co-led by D. Ronsheim, RN,C and S. Harper, RN. Purpose of the group is to increase assertiveness by recognizing certain situations in which it is difficult to say "no". Group discussed each of the listed situations and assertive ways to handle these situations. Gave group guidelines to saying "NO":

Be honest, open and direct.

Don't make excuses.

By saying "NO" you're gaining self-respect.

/es/ DONNA J RONSHEIM

RNC

Signed: 01/22/2004 10:50

TITLE: PT ED - SAFE AND EFFECTIVE USE OF MEDICATION (B)
 DATE OF NOTE: JAN 21, 2004@22:24 ENTRY DATE: JAN 21, 2004@18:55:02
 AUTHOR: ROWEKAMP,ALAN L EXP COSIGNER:
 URGENCY: STATUS: COMPLETED

PATIENT EDUCATION:SAFE & EFFECTIVE USE OF MEDICATION,
 INTERDISCIPLINARY PATIENT/FAMILY EDUCATION DOCUMENTATION

Each health care professional documents both formal and informal

PATIENT NAME AND ADDRESS (Mechanical Imprinting, if available)

RENNICK, STEVEN
 2 PEACHTREE COURT
 FAIRFIELD, OHIO 45014
 300463291

VISTA Electronic Medical Documentation

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[EX-2C P1 JA-237]

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT CINCINNATI

UNITED STATES OF AMERICA

CASE NO. 1:02-CR-00157

Plaintiff,

JUDGE DLOTT

vs.

STEVEN M. RENNICK, SR.

AFFIDAVIT

Defendant.

STATE OF KENTUCKY

COUNTY OF CLAY

) ss.
)

Now comes **STEVEN M. RENNICK, SR.**, who being first duly cautioned and sworn, deposes and state from his own personal knowledge as follows:

1. I am the Defendant in the above-captioned matter.
2. I entered a guilty plea to one count of conspiracy to distribute marijuana on August 19, 2003.
3. I entered into this plea to protect my friends and family and to ensure a lower sentence because of my criminal record.
4. The plea as read on the record was not truthful, and was not the way my lawyer, William Gallagher, told me it would be.
5. My lawyer told me I was entering a fictional plea to a possession charge since the drugs were found on my property and to go along with it so I would receive a sentence reduction for accepting responsibility.

LT

6. After I entered my plea, I asked my lawyer if I could get a sentence reduction by working for the RENU squad. He spoke with the U.S. Attorney on the case who agreed to help reduce my sentence if I helped find the Arizona connection.
7. The next day I spoke with John Mercado of the the RENU squad about teaming up. Mr. Gallagher said he did not need to be present and to just do what Mercado said.
8. I signed CI papers, was fingerprinted, and discovered that the government was only interested in uncovering drug activity in Ohio, not in Arizona.
9. My lawyer told me that since Mercado was working on a federal case, he was a federal agent having pull with the U.S. Attorney and that I should work with him. [This conversation is on tape.]
10. A friend of mine had a marijuana connection in Cincinnati. My friend, Tony Battles, came with me to meet with Mercado, who told us if we could organize a bust over 500 pounds, I would be sentenced only to probation.
11. Over the next few days, my friend and I worked on setting up a buy with Tony's marijuana connection, Solje Anderson. They said they couldn't get 1500 pounds of marijuana in Cincinnati, but could from Arizona in about a week and that it could be cheaper if we made the deal out in Arizona. [This conversation was on tape.]
12. After this deal was in place and although he initially approved it, Mercado later said we could not do this deal. He said it was too big a financial and safety risk and his boss would not authorize it. [This conversation is on tape.]
13. I cut off all communication with Solje and assumed he realized this meant the deal was off.
14. I later found out about another Cincinnati dealer named Yamine Israel. I told him I needed 500 pounds of marijuana. He and I worked out how we would execute the deal. [This conversation is on tape.]
15. I told Mercado about the set-up, I also asked him if I would receive credit if this worked out and he promised I would. [This conversation is on tape.]
16. During this time, I received threats from the drug dealers that if this did not pan out, I would be in danger. [One such threat is on tape.]

LT

17. The deal with Yamine did not materialize because the drug dealers found out it was a set-up.
18. Soon after this, one of Solje's representatives called me on the same number Solje always used. He told me the 1500 pounds of marijuana I wanted had arrived and that Solje wanted his money. He also said the price had increased because they had brought it here from Arizona themselves. I now owed them 1.2 Million Dollars (\$1,200,000.00) rather than Nine Hundred Thousand Dollars (\$900,000.00).
19. I called Mercado, who said he could not get me the money. He did say he would pretend to be a Joe Wilson, who handled the money, and that he would talk to Solje's people when I three-way conference him on Sunday, when they called me back.
20. On Sunday, I tried to call Mercado as we had arranged. The first time, his wife answered and said I had the wrong number. The second time, we got his answering machine. The drug connection became angry, threatened my life and hung up. [These conversations are on tape].
21. When I was finally able to reach Mercado, he told me to just let him know if the guy called me back. Then I called my lawyer, who simply instructed me to call RENU, and that he would call me back. He never did. When I left a message for the RENU squad, an agent named Brian returned my call and told me to be careful and go home. After sitting in my locked shop for a few more hours, that is what I did.
22. The next day I was finally able to reach Mr. Gallagher who said he assumed nothing had happened since he did not hear about it on the news.
23. Also during that week, Mercado told me just to see what I could work out if I heard back from Solje's people.
24. That Friday, I was working late at the shop. Around 9:30 p.m., as I was leaving, someone came up behind me and put a gun to my head and said, "Rennick, you're dead!" I tried to escape and wound up getting shot twice, though I managed to make it outside, one-half way to the Drive-Thru next door.
25. Two people from the Drive-Thru came to help me. I was taken to University Hospital Emergency Room, where I later saw Mercado and Kevin Co. I told them I didn't see the person who shot me, but recognized his voice as the person I spoke with when trying to setup the 1500 pound buy.

LT

26. To this day, as recent as October 30, 2004, I and my family receive threats. This most recent one is on tape, the caller stating he will shoot me in the head because the bullets in my shoulder and thigh did not get the message across.
27. The two bullets are still lodged in my body. I still walk with a cane and experience medical problems including a blood clotting disorder.
28. Since my sentencing and surrender, many other facts surrounding my attempt to substantially assist the government have come to light. One is that a witness from my shooting has come forward and executed an affidavit as to what he saw that night. His observations lead me to believe Mercado was nearby when I was shot. My memory leads me to believe he was involved with the shooting.
29. Even if Mercado was not directly involved, the person who shot me was the same person with whom I negotiated the 1500 pound drug deal. As such, my being shot was directly related to my working with the government.
30. I have always maintained my actual innocence of the crimes charged in the original and superceding indictments.
31. I believe my trial attorney was ineffective for promising me probation if I worked with Mercado, for convincing me to go along with this "fictional plea," and for letting me enter a plea while on medications affecting my judgment:
32. I believe the government had no real case against me and that my lawyer never prepared for trial because he always expected me to enter a plea, despite my constantly maintaining my innocence.
33. I believe my sentence must be vacated and my case remanded to comport with constitutional requirements.
34. Affiant further sayeth naught.


STEVEN M. RENNICK, SR.

Sworn to before me, a notary public in and for state and county and subscribed in my presence this 19th day of September, 2004.


Notary Public

LT

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT CINCINNATI

UNITED STATES OF AMERICA,
Plaintiff,

v

STEVEN M. RENNICK, SR.,
Defendant,

Case No. 1:02-CR-00157

Judge Susan J. Diott

AFFIDAVIT

STATE OF OHIO

COUNTY OF HAMILTON

SS.

Now comes, Dimetriou A. Ball, whose address is: 1132
Intercircle Avenue, Cincinnati, Ohio 45240, who being first duly
cautioned and sworn, does state from his personal knowledge as
follows:

1. I am not a defendant or party in the above-captioned matter.
2. I have no vested interest in any manner in the outcome of the above-captioned matter.
3. I am providing this sworn and truthful statement voluntarily. I have not received nor been promised anything in connection with this statement.
4. I have been a personal friend with Steven Rennick, Sr. for over 15 years.
5. I was present in the Courtroom on or about August 19, 2003, to provide support for Steve when he entered his

plea on federal marijuana charges.

6. I was shocked to hear the prosecutor state that Steve Rennick, Sr. sold marijuana to Matt Elliott and gave marijuana to Wayne Benjamine, both matters I was sure did not occur.
7. I observed Steve Rennick, Sr. motion his head from side to side gesturing these statements were untrue.
8. I listened as the judge made several inquiries of Steve as though she, too, had visually seen his surprise and denial.
9. I observed Attorney Gallagher nudge Steve and whisper to him.
10. Finally, Steve said those statements were true.
11. After the hearing I was with Steve and the other parties and lawyers and Steve was very upset with Gallagher over those two lies he insisted Steve agree with.
12. Attorney Gallagher kept telling Steve to calm down, he said it was a fictional plea to allow the court to give him acceptance of responsibility.
13. Steve continued to get more upset; he kept saying that those statements gave the court the impression that Steve dealt in drugs, which he never did.
14. All of the lawyers continued to tell the defendant's that they could not let probation know they made fictional pleas or the deals would be void.
15. Affiant saith nothing further.


Demetrious A. Ball

Sworn to before me, a notary public in and for the State and County and subscribed in my presence this ~~day of November~~ 2004.

December 3 2004



TAMI MCCOY ERVIN
Notary Public, State of Ohio
My Commission Expires October 15, 2007


Notary Public

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT CINCINNATI

UNITED STATES OF AMERICA,

Plaintiff,

v

STEVEN M. RENNICK, SR.,

Defendant,

Case No. 1:02-CR-00157

Judge Susan J. Diott

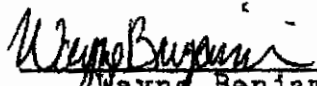
AFFIDAVIT

Now comes Wayne Keith Benjamine, whose address is: 4561 Buxton Avenue, Cincinnati, Ohio 45242, who being first duly cautioned and sworn, deposes and states from his own personal knowledge as follows:

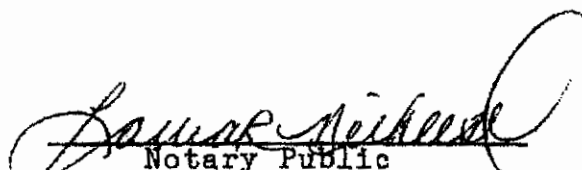
1. I am a co-defendant in the above-captioned matter.
2. On or about August 19, 2003, I appeared in U.S. District Court for the Southern District of Ohio before the Honorable Judge Susan J. Diott for the purpose of entering a plea in the above captioned matter.
3. At the plea I was represented by attorney Greg Cohen.
4. During the plea the prosecutor said that I went to Mr. Rennick's garage and he gave me a pound of marijuana for my personal use.
5. That statement was a lie.
6. Attorney Cohen told me to say it was true so I would get less time.
7. After the hearing I was upset over telling the lie.

Attorney Cohen told me not to worry because it was a fictional plea; he also said I wouldn't get probation unless I said it was true.

8. My Attorney, Greg Cohen, told me not to tell the PSI people that it was a lie or I would not get probation.
9. I never received any marijuana from Mr. Rennick, Sr.
10. At my sentencing I got probation.
11. I do not have more to say.


Wayne Benjamin

Sworn to before me, a Notary Public in and for the state and county and subscribed in my presence this 4 day of December 2004.


Notary Public

LAURA R. NEHEISEL
Notary Public, State of Ohio
My Commission Expires May 22, 2009

SEAL

SWORN DECLARATION

State of Kentucky)
)
)
County of Fayette)

I, Steve Rennick, Sr., being first duly sworn and cautioned do swear, attest, and affirm under oath and penalty of perjury the following are the truth, the whole truth and nothing but the truth so help me God:

On August 19, 2003, I appeared before the above captioned court and entered a plea of guilty, pursuant to an executed plea agreement to one count of "conspiracy to distribute marijuana in violation of 21 USC §§ 846 and 841(a)(1) and (b)(1)(B)."

Immediately following the plea hearing my counsel, William R. Gallagher, contacted Assistant United States Attorney Robert C. Brickler, who agreed I could benefit myself by "cooperating" or providing "substantial assistance" to the government. I was told to work with RENU Agent John Mercado, (on information and belief John Mercado is a Cincinnati police employee who at all relevant times was assigned to the Regional Narcotics Unit Task Force and was working in conjunction with the United States Attorney's Office).

[EX-3D P1 JA-246]

Case 1:02-cr-00157-SJD-MRM

Page 82 of 110

During my first meeting with Detective John Mercado (Mercado) had me execute three documents pertaining to being a "Confidential Informant" and I was fingerprinted.

I tape recorded every phone conversation with Mercado and I took a witness to every meeting.

I first arranged to purchase 1500 pounds of marijuana from a Solje Anderson. This transactions was to occur out of state. Mercado was fully aware of the details all along. At the last moment Mercado said his boss would not approve the deal because it was not in Ohio, and involved too much money. All conversations are again recorded.

I then arranged the purchase of 500 pounds of marijuana from a Yomiune Israel. All conversations are recorded. Mercado insisted I set this deal up at my son's trucking company. Israel spotted numerous police and SUV's behind the business and didn't show. He called me and said; "You're a cop." This attempt also failed. Mercado's boss, Kevin Coo, later told me the trucking company was a "dumb" location. I had no more possible suspects.

A little later I received a surprise male caller who advised me the 1500 pounds I ordered from Solje Anderson was now in Cincinnati and the price was now higher.

I notified Mercado at once. Mercado advised he needed time to organize the money, etc. I told Mercado I was to receive a

call at 2:00 p.m. Sunday. Mercado instructed I was to call him on a three-way call. I was to say that the money man "Joe Wilson" needed to speak with the seller (Joe Wilson was an alias for Mercado). Mercado was to buy time.

The dealer called on time. I attempted a three-way call to the number Mercado provided. A woman answered. She said there was no "Joe Wilson" at that number. After several attempts I could not get Mercado on the phone. The dealer was very irate, he said, "YOU'RE DEAD RENNICK; WE'VE HAD A BEAD ON YOU FOR TWO DAYS, YOU'RE DEAD," and hung up.

I was terrified, could not reach Mercado. Finally, reached someone with RENU who merely told me to drive around and go home. After several hours I went home.

On Friday, November 7, 2003, at 9:30 p.m. I was alone at work. I was washing up to leave when two men came from behind, out of the darkened garage. One person placed a gun at the back of my head and said, "Rennick, you're dead." I shoved the gunmen backward. Shots were fired as I headed out the door. I was shot in the leg and shoulder.

Another distinct voice yelled to the shooter, "Get him." That voice was, without hesitation or doubt, the voice of Cincinnati Police Detective and RENU Agent John Mercado.

I fell in the front parking lot. Wesley Hahn and one of his

co-workers from the Drive Thru Store next door ran to me and called 911. I was taken to University Hospital.

Within 20 minutes of the shooting, Mercado arrived at the hospital. There was no explanation as to how or why he would have arrived so soon. He asked if I knew who shot me. I said I did not, but that the shooter's voice was the same as the caller who threatened me after the botched 1500 pound deal. I did not tell him I also recognized his voice saying "Get Him" at the shooting.

Subsequent to the shooting an eyewitness has come forward who was in his car in the Drive Thru adjacent to my son's business. The witness saw one man throw an object into the woods behind the shop. The description of one of the suspects fits Mercado. The witness further described a vehicle the suspect entered and it matched the description of a vehicle driven by Mercado.

Acting on the information of the eyewitness a search of the woods behind the shop located a paper bag containing a firearm possibly used in the shooting. The weapon was turned over to the [REDACTED] Police Department.

The bullets that hit me remain in my shoulder and leg. I am most willing to have them removed in order for any needed forensic testing.

At my arrest the RENU agents seized a 2001 Freight-Liner/Classic Semi Tractor. This seizure was predicated on a theory

that this tractor was used to haul large quantities of marijuana. This tractor has been verified to the extent that it has never pulled a trailer before its purchase or since and, therefore, could never have been used for said purpose.

While on bond pending sentencing and after being shot. Mercado, in concert with a security representative from Provident Bank, obtained an "Emergency Arrest Warrant" for myself and stopped me on the highway and charged me with bank fraud concerning the financing on the truck.

Mercado appeared in court and asked a State Court Judge to hold me without bond or a \$500,000.00 cash bond. The Hamilton County Superior Court Judge was irritated over Mercado's request since he had gotten an Emergency Warrant over a several years old transaction. I was released without bond and the case was ultimately dismissed.

Mercado has further followed and harrassed several of my family members and has made his presence known at various work sites of my son's business and continues to intimidate my family.

On information and belief I understand Mercado has been accused in at least one other shooting and may have been suspended for some period of time.

I am praying this court will refer this information to the proper agencies for investigation. I live in fear for myself and

my family.

Further Affiant Saith Naught.

Date: January 12, 2005

Steve Rennick, Sr.
Steve Rennick, Sr.
Defendant, Pro Se
#04050-032 HCU
Federal Medical Center
P.O. Box 14500
Lexington, KY 40512

Sworn to before me, a notary public in and for the State and County set forth above; Steven Rennick, Sr., who provided photo identification, did subscribe hereto in my presence on the 12th day of January 2005.

[Signature]
Notary Public
NP. 6/20/06
Joyce B. Kelly

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT CINCINNATI

UNITED STATES OF AMERICA,
Plaintiff,

V

STEVEN M. RENNICK, SR.,
Defendant,

Case No. 1:02-CR-00157

Judge Susan J. Diott

AFFIDAVIT

STATE OF OHIO

COUNTY OF HAMILTON

SS.

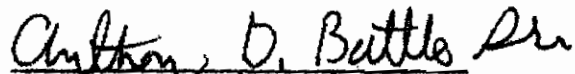
Now comes, Anthony Battle, Sr., whose address is 8819 Grenada Avenue, Cincinnati, Ohio 45231, who being first duly cautioned and sworn, deposes and states from his own personal knowledge as follows:

1. I am not a defendant or party in the above-captioned matter.
2. I have no vested interest in any manner in the outcome of the above-captioned matter.
3. I am providing this sworn and truthful statement voluntarily. I have not received nor been promised anything in connection with this statement.
4. I have known and been friends with Steven Rennick, Sr., for over twenty five years.
5. On or about November 1, 2002, I became aware that Steve

Rennick, Sr. had been arrested of some type of federal drug offense.

6. I was present when Steve Rennick entered a plea to the federal charge on August 19, 2003.
7. Shortly after the plea, Steve advised me that the case agent on the Federal Case, John Mercado, had told him he could get a lesser sentence by becoming a Confidential Informant and assisting the government in developing other drug cases.
8. Steve asked me if I could help him because he didn't know any people to set up.
9. I advised Steve that I had met someone in the Justice Center where I was locked up for a period of time for domestic violence. Steve asked if I would go with him to meet with Mercado.
10. I was present with Steve Rennick at his first meeting with Detective John Mercado.
11. I observed Steve get fingerprinted and sign several documents relative to him becoming a registered Confidential Informant.
12. At the meeting I personally heard Detective John Mercado promise that if Steve could set up a 500 lb marijuana bust that Steve would receive a sentence of straight probation.
13. I informed Mercado that my contact, Solje Anderson, could supply that quantity.
14. Mercado presented Steve and I with a photo of Solje Anderson and I identified the photo as the man I came to know at the justice center.
15. I listened in and recorded the telephone communications between Steve Rennick and Agent Mercado. Agent Mercado clearly promised that Rennick would get probation if he assisted the government with this proposed deal.
16. I also listened to and recorded a conversation between Steve Rennick and his attorney, Gallagher, during which Steve asked Gallagher if Mercado had the power to promise a sentence of probation. Attorney Gallagher told Steve that Mercado was working with the Assistant U.S. Attorney and, therefore, had the power to recommend such a sentence.

17. Even though I was not the Confidential Informant, Mercado issued me a tape recorder and told me to get all calls involving the drug transaction on tape.
18. I am completely knowledgable about all tape conversations, and tapes exist to confirm statements herein.
19. Steve and I had four more personal meetings with Mercado concerning the drug bust.
20. We originally set up a deal with Soje Anderson to purchase 1500 pounds from his connection in Arizona.
21. After setting up the 1500 pound drug buy, Mercado advised Steve and I the deal could no longer take place in Arizona, but would now have to occur in Cincinnati.
22. When the 1500 pound deal fell through, I further helped Steve by getting another buyer for a 500 pound buy in Cincinnati.
23. Mercado told Steve and I that the 500 pound deal would also end up getting Steve a sentence of no more than probation.
24. During this entire period of time I electronically recorded conversations with drug dealers, and I also recorded conversations with Mercado. There are about 15 taped conversations in all.
25. Further Affiant saith naught.


Anthony Battle, Sr.

Sworn to before me, a notary public in and for the State and County and subscribed in my presence this 2nd day of December 2004.



SEAL

JANIE HENRY
NOTARY PUBLIC, STATE OF OHIO
MY COMMISSION EXPIRES
March 29, 2009


Notary Public

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

~~FILED~~

~~MAR 8 2005~~

~~JAMES BONINI, Clerk
CINCINNATI, OHIO~~

STEVE RENNICK, SR.

Movant/Defendant

vs

UNITED STATES OF AMERICA

Respondent

C-1-05-00050

CR-1-02-157-3

Hon. Susan J. Dlott

U.S. District Judge

MEMORANDUM ADDENDUM TO
DEFENDANT'S MOTION PURSUANT

28 USC § 2255

Comes the defendant, Steve Rennick, Sr., pro se, and does
Supplement by Addendum his Motion to Vacate, Set Aside, or Amend
his sentence pursuant to 28 USC § 2255 and does state as follows:

FIRST ADDENDUM ISSUE

DEFENDANT'S DUE PROCESS AND APPELLATE RIGHTS
WERE DENIED BY THE COURT'S FAILURE TO
FILE NOTICE OF APPEAL AND BY DEFENSE
COUNSEL'S INEFFECTIVE ASSISTANCE IN NOT
PROTECTING DEFENDANT'S SUBSTANTIVE RIGHTS

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FILED
JAMES BONINI
CLERK

#200

On December 14, 2004, defendant filed a motion seeking to restore his right to take a direct appeal based on defendant's new discovery that his appellate rights were denied him by (1) the Court Clerk's failure to file defendant's notice of appeal as requested by the defendant at sentencing; and (2) defendant's post conviction attorney's failure to file said notice or at least determine whether or not such notice was filed.

The court responded by order and openly acknowledged "The Clerk of Courts, however, did not file the notice of appeal on Petitioner's behalf." (Court Order, undated at pg 2).

In this instant matter the court properly advised the defendant of his right to appeal and his right to proceed in forma pauperis, and further advised defendant that the clerk would be directed to file the notice of appeal all pursuant to Fed R. Crim P. 32(j) (see DE 188 at 19-20). The defendant, through counsel, requested the court to order the clerk to so file said notice and the court affirmatively responded. While the court fulfilled its responsibility on the one hand; the court readily concedes that the clerk's failure is a violation of Rule 32(j)(2).

The court is also correct in its determination that the court's ability to extend time to correct this matter is limited to thirty days pursuant to Fed. R. Crim. P.32 and Fed. R. App. P. 4(b)(4) and, therefore, the defendant is required to seek alternative manners of relief.

The court directed the defendant to United States v. Hirsh,

207 F.3d 928 (7th Cir. 2000). In Hirsh the clerk also failed to file the notice of appeal and Hirsh's counsel failed to verify the filing of said notice. The court in Hirsh allowed the appeal to be filed under a theory that "what should have been done will be treated as done."

Unfortunately for Hirsh the U.S. Court of Appeals for the Seventh Circuit disagreed with the court's remedy and was reluctantly forced to dismiss the appeal. While the appeal was dismissed, Hirsh was given a new avenue for remedy, the Appellate Court found: "He may now file a motion under 28 USC § 2255, contending that Forsyth's failure to ensure that the clerk followed through deprived Hirsh of the assistance of counsel guaranteed by the 6th Amendment. [] If the district court finds that Forsyth was asleep on the job, then the court must vacate the judgment and reimpose the sentence to permit an appeal." Id at 931.

On the very day of sentencing, after the defendant requested the clerk file the notice of appeal, the defendant was approached by Attorney Kenneth L. Lawson, II, who represented co-defendant Matthew Elliot. Attorney Lawson regaled the defendant with the poor performance his present attorney, William Gallagher, had done. He told the defendant that he would like to handle defendant's appeal and needed to start right away. The defendant was easily manipulated and engaged Lawson before leaving the courthouse. The defendant paid a large retainer and merely relaxed in the assurance that his appeal was underway.

Months passed and with the exception of several more requests for additional monies by Attorney Lawson, nothing was ever shown the defendant concerning his appeal. As the time neared for the defendant to enter prison the defendant began to press Lawson on the appeal and was always put off with various excuses. Finally, in disgust the defendant hired new counsel in September 2004 who informed him no record of an appeal could be located.

The defendant then started to gather information on his own in order to be involved with his own destiny. In December 2004 the defendant discovered that the transcripts of his sentencing and the sentencings of his co-defendants had never been transcribed, indicating his newest attorneys also failed to even review the key elements pertaining to post conviction relief. The defendant now represents himself with only the assistance of "jail house lawyers."

Defense counsel Lawson had a specific duty and obligation to file or confirm filing of a timely notice of appeal. While it is true that Lawson was in the courtroom when the defendant instructed the clerk to file the notice; Lawson was not representing the defendant at that time. Inasmuch as Lawson was hired solely for the direct appeal, he surely bore the burden of making sure defendant's appellate rights were preserved.

There is only limited authority on this subject with best instruction found in Roe v. Flores-Ortega, 528 U.S. 470, 145 L.Ed. 2d 985, 120 S.Ct. 1029 (2000) in which the Supreme Court held the

two prong test in for effective assistance of counsel as held in Strickland v. Washington, 466 U.S. 668, 80 L.Ed.2d 674, 104 S.Ct. 2052 (1984) was the proper form of inquiry.

In the Roe court the basic decision dealt with a situation where the defendant's instructions were not specifically known. This is not the case here where the defendant and his trial counsel announced the defendant's desire for an appeal and for the clerk to file the notice on the record at sentencing. It has long been held that a lawyer who disregards specific instructions from the defendant to file a notice of appeal acts in a manner that is professionally unreasonable. See Rodriguez v. United States, 395 U.S. 327, 23 L.Ed.2d 340, 89 S.Ct. 1715 (1969) cf. Peguero v. United States, 526 U.S. 23, 28, 143 L.Ed.2d 18, 119 S.Ct. 961 (1999) ("[w]hen counsel fails to file a requested appeal, a defendant is entitled to [a new] appeal without showing that his appeal would likely have had merit.").

In Roe supra 995, it was further held that counsel's failure to file the notice of appeal cannot be considered a strategic decision. The filing is a purely ministerial task and the failure to file reflects inattention to the defendant's wishes.

In the case at bar the defendant informed the court of his desire to appeal. The court inquired as to whether his counsel, William Gallagher, would "protect the rights of the defendant?" He assured the court he would and then asked the court to have the clerk file the notice of appeal. There is no question that

Attorney Gallagher retained the obligation to follow up and verify that the notice was filed.

There can also be no question that the hiring of Attorney Lawson to litigate defendant's appeal obligated him to file the notice of appeal or verify the clerk's filing.

The performance by ^{Counsel} both attorneys in failing to follow the defendant's explicit instructions is professionally unreasonable and without question satisfies the first prong of the Strickland test. The defendant is left only with the need to demonstrate prejudice.

In this case the defendant's constitutional right to direct appeal was denied by counsel's substandard, ineffective assistance. The failure to preserve the direct appeal was nothing more than a blatant failure to represent the defendant. "The complete denial of counsel during a critical stage of a judicial proceeding, however, mandates a presumption of prejudice because 'the adversary process itself' has been rendered 'presumptively unreliable.'" United States v. Gronic, 466 U.S. 648, 649, 80 L.Ed.2d 657 104 S.Ct. 2039.

By counsel's failure to preserve direct appeal the defendant is limited to collateral attack, which forecloses certain issues and requires the burden of plain error on others. A good example is found in that had the defendant been on direct he would have automatic consideration of issues raised in United States v. Booker, 543 U.S. ____ (2005)(No. 04-105) and Blakely v Washington, 124

S.Ct. 2531 (2004); both of these cases impact the defendant to the extent that his sentence was enhanced by matters not supported by his plea. Clearly this example alone demonstrates prejudice resulting from counsels' ineffectiveness in their assistance.

The defendant was entitled to a direct appeal, he informed the court of his desire and intention on the record. The defendant was represented by ^{Counsel} two prominent private attorneys who both failed to provide the acceptable and reasonable level of effective assistance by ^{The} their failure to file and/or verify the clerk's filing of a notice of appeal. (Enc.)

For all the reasons set forth above, the defendant prays this court to vacate the defendant's judgment and reimpose defendant's sentence, thereby providing the defendant a right to file a direct appeal.

SECOND ADDENDUM ISSUE

DEFENDANT'S 5th AMENDMENT IS CONTINUING TO BE DENIED AS THE RESULT OF THE COERCIVE THREATS MADE BY THE PROSECUTOR ARISING TO LEVEL OF MISCONDUCT AND OBSTRUCTION

Subsequent to the filing of the defendant's motion, pursuant to 28 USC § 2255, the defendant, by and with the assistance of friends and family, presented information to Cincinnati Police Chief Stricker. This information included the defendant's statement accusing Detective John Mercado of being present when the

defendant was shot.

Detective Bob Randolph was assigned to investigate the matter for the Cincinnati Police Department. He talked with several family members and friends and constantly referred to his copy of the § 2255 motion.

Detective Randolph became indignant and informed family members that he felt there was no real case. He never met with the defendant to get information from the source. He finally threatened family members by stating; "AUSA Brickler told me to tell you, [a family member], that if Steve does not withdraw his § 2255 then he [Brickler] will indict the entire family." [Transcripts of phone calls currently in preparation].


It is readily apparent that defendant's "fictional plea" and defendant's shooting while operating as a confidential informant are matters the government does not want to discuss, but it should be known that this defendant intends to pursue justice in this matter.

SUMMARY

The rules governing a § 2255 motion require a defendant to raise every issue. This means that in order to file this motion to obtain a direct appeal, the defendant must raise all issues and defendant has done so. The defendant prefers a direct appeal and is entitled to such. The defendant filed his § 2255 to comply with the time limitations and did so prior to knowing he could

obtain same. The court, therefore, should vacate and reimpose sentence which would allow the defendant to proceed on direct appeal. If the court does so; then all other issues should be dismissed without prejudice pending the results of the direct appeal at which time defendant could raise the issues if needed.

Respectfully submitted,


Steve Rennick, Sr.
Defendant, Pro Se
#04050-032 HCU
Federal Medical Center
P.O. Box 14500
Lexington, KY 40512

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served this 22nd day of February 2005, by regular mail, on Robert C. Brickler, AUSA, 221 East 4th Street, Suite 400, Cincinnati, OH 45202.

February 22, 2005

Steve M. Rennie, Sr.
Steve Rennie, Sr.
#-04050-032 HCU
Federal Medical Center
P.O. Box 14500
Lexington, KY 40512

[DE-200 P10 JA-264]

FILED

APR 14 2005

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

JAMES BONINI, Clerk
CINCINNATI, OHIO

STEVEN RENNICK, SR.,

Movant/Defendant,

vs

UNITED STATES OF AMERICA,

Respondent.

Case No.: CV-1-05-00050

CR-1-02-157-3

Hon. Susan J. Dlott

U.S. District Judge

REQUEST FOR JUDICIAL NOTICE

Comes the defendant, Steven Rennick, Sr., pro se, and does pray this court to Notice and Supplement the Record with the contents herein which are offered under oath and under penalty of perjury, and defendant does state as follows:

On January 26, 2005, defendant filed his timely petition pursuant to 28 USC Section 2255. On February 22, 2005, the defendant filed a "Motion to Supplement by Addendum" said Section 2255 motion which this court granted leave to file. (The addendum was filed simultaneous with said motion).

On February 17, 2005, Assistant United States Attorney (AUSA) Robert Brickler filed a request for 30 additional days to respond citing the need to investigate newly raised allegations which defendant raised in his Section 2255 motion. (The defendant has never received advice as to whether said continuance was issued).

201

The respondent's response, assuming the extension was granted, was due on March 17, 2005, which date has passed without response.

Among the allegations included in defendant's pleading are facts and allegations suggesting that defendant's Case Agent, John Mercado, may have been involved in the shooting of the defendant while the defendant was registered with the government as a Confidential Informant. This matter is currently under investigation by the Cincinnati Police Department.

During the course of this investigation the police have had numerous hours of conversations with people associated with or related to the defendant. Many of these telephone conversations were recorded, (defendant's family having previously disclosed the fact that all such calls are being recorded, which is the result of continuing threats by phone which they have received).

Transcripts of these conversations indicate that the police are being partially directed by AUSA Brickler and to the extent that police have discussed the defendant's motion pursuant to 28 USC Section 2255, it seems that their investigation is now related to the matters presently before the court. Since it appears this investigation may be the one alluded to in respondent's Motion for Extension of time; and because there is a fair amount of mis-statements of fact, the defendant does provide the following sworn and attested statement under penalty of perjury:

STATE OF KENTUCKY)

COUNTY OF FAYETTE)

SWORN AFFIDAVIT

I, Steven Rennick, Sr., the pro se defendant in the above captioned matter, do swear, attest, and affirm, under oath and penalty of perjury as to each of the following:

1. It has been stated that I have said that John Mercado shot me. I did not make that statement. I do not know the identity of my would-be assassin.
2. I have always, from the very night of my shooting, said I heard two voices. The first voice directly behind me said, "Rennick you're dead." At that moment I swung backwards and a shot fired, hitting my left shoulder; a second voice yelled "Get Him" as I moved toward the door and the second shot hit my left leg. I have always maintained that the first voice was that of the same man who threatened me days earlier because he was determined I was setting him up on a drug deal. I have always maintained the second voice was that of John Mercado, and I earnestly so maintain again herein.
3. Transcripts record a conversation between my sister, Joanne Childers (J) and Cincinnati Detective Bob Randolph (R) as follows:
 - (R) "Hold on a minute. Here is the problem that I have, okay. He got shot in November of 2003. In December, after the trauma of getting shot is beginning to wear off and he is healing, and he is getting a little better, he doesn't say that. In January of '04 he doesn't say the voice and Mercado. In February of '04 he doesn't say the voice of Mercado. In March of '04 he doesn't say the voice of Mercado. Do you see the point? April, May, June, July, August, September, October, November, December. In January of 2005"-
 - (J) "When he was in prison."
 - (R) "Fifteen months later, he says there was another voice. I recognize that voice as Agent John Mercado. The voice said 'get him.'" [Tape 2, pg 4].
4. Detective Randolph made multiple statements through many conversations intimating that I never implicated John Mercado until January 2005.
5. Detective Randolph has never interviewed me on these matters despite the fact that I recently was housed in the Justice center where an interview would have been more convenient for him.

6. When my sister told me the problem Detective Randolph was having over his belief that I never mentioned hearing Mercado's voice until 15 months later, I gave my sister some of the names I told right after the shooting and asked her to relate those to Randolph so he could resolve the matter. The following conversation took place:
7. (J) "He said if you would talk to Dave Manis (sp) at OMI [Office of Municipal Investigations] he knew that had all come up before that. Ken Lawson knew. Todd Morris knew, who is the probation officer, do you know him?"
 (R) No, I don't.
 (J) "He is in the Federal Building, I think. I can give you their phone number. He said, I told him, he is real anxious to talk to you."
 (R) "I don't even know we are going to at this point. It is up to my supervisors. We will wait and see when Steve gets here next week. I don't know. I have to review what we have come up with at this point with my bosses. They need to make a decision along with Brickler. Which way they want to go with this."
 (J) "What is Mr. Brickler saying?"
 (R) "I need to review it all with him. I have had discussions up to this point. I told you what he said about considering opening up a conspiracy investigation, that is on him. If that is what he chooses to do? At this point I need to sit down with my supervisors, which I have to do here and there as things have developed. Now we need to sit down and go over everything. And let them decide if they even want me to go talk with Steve when he comes here." [Tape 3, pp 17-18].
8. It is my understanding from these conversations that even though there are numerous witnesses who know I have made the same statements from the very night of the shooting until the present, the police have now determined they have no need to interview me or verify my position with any of the witnesses.
9. For the record; I was shot on Friday, November 7, 2003. I recall telling a doctor in the emergency room words to the effect of, "a cop was involved in my shooting." I have no knowledge of who I told. I also remember an emergency room doctor talking to me about removing the bullets and commenting to me, if a cop was involved you should probably leave them in so the police don't lose them.
10. On Sunday, November 9, 2003, I was visited by my wife Phyllis and two daughters, Melissa and Becky. I was also seen by probation officer Todd Morris. I told all four of them about

hearing Mercado's voice. This was within 48 hours of the shooting.

11. I also advised my lawyer, William Gallagher, as well as my co-defendants and their attorneys, Kenneth Lawson and Gregory Cohen about my suspicions.
12. On advice of counsel, I met with Mr. Dave Munis (sp) with the Office of Municipal Investigation (OMI). He seemed interested in the matter and promised he would look into it. I specifically reported to him that I heard Mercado's voice during the shooting.
13. I was subsequently informed that the matter was transferred to an Agent Green, with the FBI and OMI was no longer involved; I have no first hand knowledge if that is true.
14. After I was sent home to recover, I was never left at home alone. My family started getting threatening phone calls and cars would slow and sometimes stop at the house. Within the first two weeks I called the Fairfield Police who came to the house. I advised them I had been shot, that I was afraid, and that I had heard a Cincinnati detective's voice during my shooting. The police started routinely checking by my home.
15. I also told my orthopedic doctor, Dr. McTidge, all about my shooting and my hearing of Mercado's voice at the shooting.
16. At this same time period I was having treatment and therapy for my condition of Post Traumatic Stress Syndrome. All details of the shooting, including Mercado's role, was discussed and recorded in my Veteran's Classified Mental Health Record.
17. These are only some of the people told of Mercado's voice being at the shooting, and were told contemporaneously to the time of the shooting.
18. The detective's assertion that I waited until January 2005 is not supported by the verifiable evidence in this matter. I have told the same facts to everyone involved all along.
19. As stated in other documents, John Mercado arrived at the University of Cincinnati Hospital very soon after I was brought in. I recall that even a doctor made the comment, "You must have been on scene." When Mercado came in where I was, I was very afraid and, understandably, I did not say that I heard him say "Get Him" while bullets tore into my flesh.

20. Mercado asked; "Didn't Tony Battles leave the shop about 20 minutes before this happened?"
21. I said, "I don't know." That was not true. I did know, and Tony Battles had left almost exactly 20 minutes before the shooting. The fact that Mercado was correct confirmed in my mind that I heard his voice because there was no way to know when Battles left unless you were there or you were watching from somewhere near by and, if you were watching, you would have seen the shooter(s) leave the building.
22. Detective Randolph also advised my sister that the statement I received from a witness was a scam. He advised that there was no such person and the entire document was false. He specifically said many parts were fraudulent, including, inter alia; (1) There is no person named Antonio Louis employed by CG&E nor has there ever been; (2) The phone number listed in the witnesses statement is disconnected and never belonged to an Antonio Louis, (many people use phones not in their own name); (3) The notary is a "90 year old black man" who claims his notary stamp and impression seal were stolen 18 months before this signing, so the notary signature is forged; (4) there is no date on the document.
23. In the month of May 2004, I received a message to call my friend Demetrius Ball (hereinafter referred to as "Duke"). When I called him he informed me that the owner of the Drive Thru next to the shop where I was shot had spoken with a customer of his, and this customer, Antonio Louis, had observed two men exiting the rear of the shop while I was lying on the front parking lot, bleeding and awaiting help.
24. I have never met or spoken with the witness and all communications with this witness have occurred through Duke Ball or an investigator, infra.
25. The witness gave Duke a description of one of the men and the vehicle the man got in. The man and the vehicle description fit John Mercado, and the witness believes he could pick the man he saw out of a line-up.
26. The witness claimed to see one of the two men throw something like a bag into the woods behind the shop.
27. Relying on this information, I hired Jay Etter, with Stealth Investigations out of Dayton, Ohio (A referral from the law firm of Rion, Rion, and Rion) to search the woods for a possible weapon. The initial search was fruitless.

28. There were subsequent searches and, finally, a weapon was found, retrieved, and now is in police possession. The advising of Police Chief Striker of the finding of the gun was the reason the current investigation was started.
29. There would never have been a search or a gun found had the witness not come forward.
30. On September 28, 2004, Investigator Jay Etter met in person with Duke Ball and the witness and received the witness statement from the witness. I am told it was already notarized.
31. Detective Randolph has been very adamant that this witness is a fake and does not exist. (There are pages of transcripts in which the detective seeks to convince the defendant's sister that the witness is a fake.).
32. Duke Ball maintains that not only is the witness real, but that he is in contact with him.
33. Duke Ball now claims the witness has been threatened to not cooperate in this matter. However, the witness has agreed to an in-camera private inquiry with the court at a non-disclosed time. (If the court consents, the witness will contact the court for the court's scheduling).
34. I have never had contact with the witness nor has any member of my family. All the material and statements concerning the witness are the results of Demetrius Ball.
35. On February 25, 2005, I was in the Court of Common Pleas for Hamilton County, to testify in a state forfeiture hearing. One of my federal co-defendants in this matter, Mr. Wayne Benjamine, testified for me under subpoena. Officer Mercado testified for the state.
36. Several days after the testimony, Mr. Benjamin, who presently lives with his elderly grandmother at 4651 Buxton Avenue, Cincinnati, Ohio 45242, was the subject of a breakin vandalism of his grandmother's garage. Mr. Benjamine's truck and his grandmother's vehicles were severely damaged. A note was found at the scene that said; "Testify again and bad things happen to good people." Other than his testifying for me, Mr. Benjamine has not testified for anyone.
37. I am not accusing anyone of being a part of Mr. Benjamine's misfortune, I merely raise the coincidence to the court's attention.

38. Throughout Detective Randolph's conversations he has made many references to my 2255 motion and to AUSA Brickler:
- A. (R) "I have your brother's motion that he has recently filed."
(J) "The 2255."
(R) "Yes, with signed affidavits from Anthony Battle, Demetrius Ball, Wayne Benjamine, and your brother, Steven." [Tape 2 at 34-35].
 - B. (R) "Well, listen to this. You know Mr. Brickler?"
(J) "Yes, ... I know who he is?"
(R) "Okay, he is the Assistant U.S. Attorney. I have had conversations with him about this. At this point, depending on how this all shakes out, he is preparing to open up a conspiracy to commit fraud case on everybody involved in this. It is all bogus" ...
 - C. (J) "Are you saying the judge are (sic) not going to even look at this?"
(R) "No, no, no, no."
(J) "That 2255?"
(R) "No, no, no. I never said that. I never said that. I am just telling you that Mr. Brickler informed me that with the information I have presented to him so far there is serious consideration. Depending on how it all evolves, okay. They may open up a conspiracy to commit fraud investigation. This thing is just kind of blowing up here. [Tape 3 at 3-4].
39. As a result of Detective Randolph's comments concerning AUSA Brickler, my family members are extremely frightened that they are going to be charged with the crime of conspiracy for attempting to help me.
40. For the record, I was shot twice on November 7, 2003, inside my son's place of business. I did not see who shot me, but I heard the voices I say I heard. Detective Randolph told my sister that Mr. Brickler has a statement and evidence that I had myself shot - that is not true, and is patently absurd.
41. I believe Detective John Mercado was present when I was shot. I ascribe no motive for his actions, but I believe it is the truth. Whether he was part of my shooting or not is irrelevant to my sentence, or my crime, and is separate from the other legal issues.
42. I have provided this lengthy material simply to make it a

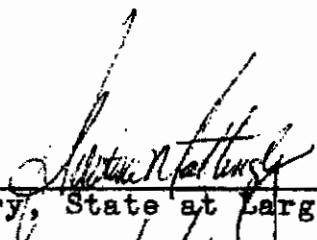
part of the public record. All tapes and transcripts are available on request.

Further affiant saith naught.


Steven M. Rennick, Sr.
Defendant, Pro Se

The foregoing was subscribed to before me by Steven M. Rennick, Sr., Inmate No: 04050-032, who provided photo identification, this 12th day of April 2005.

S E A L


Notary, State at Large, KY
4/23/2005 Fayette Co.

CERTIFICATE OF SERVICE

I, Steven M. Rennick, Sr., do hereby certify that the original of this document was filed with the Court Clerk identified below and a true and correct copy was further sent to the other party or parties identified below by depositing same into the prison legal mail box, postage prepaid, on the 12th day of April 2005.


Steven M. Rennick, Sr.
#04050-032

Clerk of the Court
U.S. District Court
Southern District of OH
100 East Fifth Street
Cincinnati, OH 45202

Robert C. Brickler
AUSA
221 E. 4th Street
Suite 400
Cincinnati, OH 45202